PRIVATE MILITARY COMPANIES AS "NEW PEACEMAKERS" IN AFRICA: IS REGULATION SUFFICIENT?

Aldri van Jaarsveld

Thesis presented in partial fulfilment of the requirements for the degree of Master of Arts (International Studies) at the University of Stellenbosch

Promoter: Professor WJ Breytenbach

December 2007

DECLARATION:

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and has not previously in its entirety or in part, submitted at any university for a degree.

Signature:……Date: ……

ABSTRACT

This thesis evaluates and explores the function of Private Military Companies (PMCs) on the African continent. The phenomenon of PMCs evolved after the end of the Cold War. This study focuses on the relevant international and national legislation regulating PMCs that conduct active military assistance operations. These PMC operations have a strategic impact on the political, social, economical and security environments of the areas in which they are contracted to operate. The purpose of the thesis is to assess whether PMCs are efficient and cost effective, can be held accountable and to whom, and if current legislation (national and international) regulating PMCs is sufficient.

This thesis is a literature survey that seeks descriptive and comparative information relevant to the purpose of this study. It deals with that information qualitatively. No empirical research has been conducted. It is therefore not an opinion survey as no questionnaires have been completed, although interviews with knowledgeable people have been conducted. The thesis focuses on the operations conducted by the now defunct Executive Outcomes (of the Republic of South Africa), a combat type PMC in Angola and Sierra Leone and Military Professional Resources Incorporated (of the United States of America), a non-combat type PMC in Equatorial Guinea.

The study concludes that PMC operations through legitimate government contracts at international level are indeed legitimate. The regulations (international and national, if they exist) regarding PMCs are not sufficient, and allow for many grey areas. PMCs that operate in this sphere of grey areas are unacceptable for the international community in the current milieu. PMCs are, however, operating in a vacuum of accountability and regulation (international and national). With sufficient legislation, PMCs could be the new peacemakers.

OPSOMMING

Hierdie tesis evalueer en ondersoek die funksionering van Privaat Militêre Maatskappye (PMM'e) en hul werksaamhede in Afrika. Die PMM-verskynsel het voortgespruit uit die stilstand van die Koue Oorlog. Die tesis fokus op die relevante internasionale en nasionale wetgewing rakende PMM'e wat aktief in een of ander formaat by militêre operasies betrokke is. Hierdie PMM-operasies het 'n beduidende strategiese impak op die sosio-politiese, ekonomiese en sekuriteitareas van die gebiede waartoe hul gekontrakteer is. Die doel van die tesis is om die effektiwiteit en koste-effektiwiteit van PMM'e te evalueer, asook om uit te vind of hulle aanspreeklik is en aan wie hulle verantwoording moet doen. Daar is ook gefokus op huidige wetgewing (internasionaal sowel as nasionaal) rakende PMM'e om die doeltreffendheid van sodanige wetgewing te bepaal.

Hierdie tesis is 'n opname van beskrywende en vergelykende literatuurstudies, relevant tot die doel van die tesis. Inligting is kwalitatief aangewend. Geen empiriese navorsing is onderneem nie. Hierdie tesis is ook nie gebaseer op 'n meningsopname nie. Geen vraelyste is ingevul nie, maar daar is wel onderhoude met kenners van die betrokke vakgebied gevoer. Die tesis fokus op die vroeëre werksaamhede van die ontbinde "Executive Outcomes" as Suid-Afrikaanse PMM wat aktief betrokke was by oorlogvoering in Angola en Sierra Leone en ook op die steeds aktiewe Amerikaanse PMM "Military Professional Resources Incorporated" wat in Ekwatoriaal Guinieë werksaam is en wat nie aktief by oorlogvoering betrokke raak nie.

Die tesis kom tot die gevolgtrekking dat PMM-kontrakte wat bekom word deur legitieme regeringskontrakte op internasionale vlak wel legitiem is. Daar is bevind dat wetgewing (internasionaal en nasionaal, waar wel beskikbaar) rakende PMM'e egter nie voldoende en effektief is nie. Daar is steeds baie grys areas rakende verantwoordbaarheid en wetgewing van PMM'e. Dit is in hierdie grys areas waarin baie PMM'e funksioneer en waardeur hulle onaanvaarbaar vir die internasionale gemeenskap in die huidige klimaat is. Doeltreffende wetgewing kan moontlik verseker dat PMM'e die nuwe vredemakers kan word.

ACKNOWLEDGEMENTS

I would like to thank

- My parents for all their love and support, and for providing the opportunity for me to study.

- My lecturers (Dr Hennie Kotzé, Professor Philip Nel, Dr Anthony Leysens and Professor Willie Breytenbach) in my first year for introducing me to the interesting and fascinating world of political science.

- My family and friends for all their support.

- All the academics and authors on the interesting subjects of Private Military Companies and Mercenaries, and those who are in the field “working” it.

- Everybody living on the African Continent for making it such an interesting and cosmopolitan continent which is very dear to my heart.

- My cousin Karen Garbers for her time and effort reviewing and editing my thesis, and her husband Hein for being understanding and supportive.

- Jean Cilliers who conveyed messages, e-mails and drafts back and forth to Professor Breytenbach.

- Professor Willie Breytenbach whose encouragement, guidance, patience and experience were extremely valuable. Without his input and professional insight I could not have done it.

- The Heavenly Father for providing me with health and for being there with me every step, every letter and every page.

CONTENTS

Page

CHAPTER 1: INTRODUCTION 1
1.1 Problem statement 1
1.2 Purpose and significance of the study 6
1.3 Research methodology 8
1.4 Concepts 9
CHAPTER 2: REGULATORY FRAMEWORK REGARDING PMCs 19
2.1 Establishing a workable regulatory framework 19
2.2 Geneva Conventions regarding PMCs and Mercenaries 21
2.3 The UN conventions, treaties and regulations regarding PMCs and Mercenaries 22
2.4 The OAU/AU conventions regarding PMCs and Mercenaries 25
2.5 South African laws regarding PMCs and Mercenaries 26
2.6 United States laws regarding PMCs and Mercenaries 27
2.7 Assessment of the regulatory framework 30
CHAPTER 3: CASE STUDY – EXECUTIVE OUTCOMES AS COMBAT TYPE PMC IN ANGOLA 37
3.1 Angola's domestic regulatory framework for mercenaries and PMCs 37
3.2 EO's background: a South African PMC in Africa 41
3.3 Who mandated EO in Angola? 44
3.4 EO's withdrawal from Angola 48
3.5 Assessment 49
CHAPTER 4: CASE STUDY – MPRI AS A NON-COMBAT TYPE PMC IN EQUATORIAL GUINEA 52
4.1 Equatorial Guinea's domestic regulatory framework for mercenaries and PMCs 52
4.2 MPRI's background: an American company in Africa 53
4.3 Who mandated MPRI in Equatorial Guinea? 56
4.4 MPRI's role (as non-combat type PMC) in Equatorial Guinea 57
4.5 Assessment 59
CHAPTER 5: CONCLUSION 61
5.1 Comparing EO with MPRI 61
5.2 Is regulation sufficient? 62

5.3 The future of PMCs in Africa (what must PMCs do to be regarded as "peacemakers"?) 77

BIBLIOGRAPHY 81

CHAPTER 1: INTRODUCTION

1.1 Problem statement

Winston Churchill once said, “There is only one thing certain about war, that is, that it is full of disappointments and also full of mistakes” (Paull, 1960:preface). “Some people see the tide of war come and go and have the knack to adapt to whatever situation comes their way. They let fate roll over them without offering resistance and consider their abnormal way of life to be completely normal. Maybe they are right.” (Breytenbach, 2002a:7). To some, private military companies (PMCs) might be abnormal companies to work for, but to others these companies might be their only way to make a living as skilled soldiers. To avoid disappointment and possible mistakes, PMCs need to be regulated, since they might have a valuable role to play in the future.

Today after the Cold War era different players stepped into the arena of modern warfare. One of the participants that emerged from the end of the Cold War is Private Military Companies/Firms (PMC/Fs). According to Bardal & Keen (1997) post-modern conflicts involve substantial economic aspects. Entrepreneurs make use of opportunities to profit from the uncertainties created by widespread conflict.

Malaquias (2001:317) feels that, in the absence of a global ideological divide, both old and new wars will be sustained by more regional, national, even local factors of political economy, ethnicity, religion, personal ambition and greed. The new spate of wars according to Smith (2002:22) will be organised mainly around economic gain and fought over resources, with state armies becoming more commercially minded. Van Creveld (1991:226) states that as new forms of armed conflicts multiplied and spread, they cause the lines between public and private, government and people, military and civilian, to become as blurred as they were before 1648 The Peace of Westphalia. After 1648 to 1939 the state was the main actor in the wars fought in the modern era. According to Reno (2000) “new wars” in Africa reveal three characteristics: they happen in weak states, non-state actors such as rebels are prominent and the privatisation of inter-state relations is relevant.

Reno (1998:2) mentions that the term “weak state” signifies a spectrum of conventional state capabilities that exists alongside (generally very strong) informal political networks. Another critical feature of this spectrum is that of collective versus private interests, for example, inhabitants of a collapsed (bureaucratic) state may enjoy security because of the presence of an armed organisation seeking mineral resources for the benefits of its members and shareholders. A surplus of weapons in Africa after the Cold War and greedy warlords, rulers, rebels and mercantilists add to the conflicts in Africa (Breytenbach, 2002b:4). With poverty suffocating the continent, Breytenbach (2002b) states that it could be explained why the majority of contemporary wars are more internal than international and why wars are mostly about resources (especially oil, gas, and diamonds).

After the withdrawal of superpower military support at the end of the Cold War, a growing number of nations, mostly in Africa, were unable to provide the necessary security for their citizens. Smith (2002:22) mentions that as western countries sold off their state assets and ran down their civil services, many domestic security tasks were outsourced to private companies. Weak states tend to have a problem in the sense that they cannot provide national unity or national security for their citizens, from policing, to the criminal justice system, to social services, or to the military (Krasner, 1985:28). Migdal (1988:4-5) states that “capabilities of states include the capacities to penetrate society, regulate social relationships, extract resources, and to appropriate or use resources in determined ways. Strong states are those with high capabilities to fulfil these tasks, while weak states are on the low end of a spectrum of capabilities.” Weak states (for example Iraq and Sierra Leone in Africa) are therefore incapable of enforcing/keeping peace in their own territories, because of their weakness and the lack of financial resources.

PMCs are becoming increasingly involved in certain areas, on the African continent and also the war in Iraq. Shearer (1998b:9-10) states that Western states have become reluctant to deploy forces in areas in which they have little direct strategic interest, or where the risks of involvement are unacceptably high. This reluctance according to Shearer (1998b:10) creates a market opportunity for military companies which have in some cases acted as foreign policy proxies for governments unable or unwilling to play a direct and open role. According to

Jackson (2002:33) and Reno (2000:286), the process of globalisation and weak states have widened the number and type of participants engaging in Africa's internal conflicts.

It is striking that the countries in Africa most associated with the use of mercenaries and PMCs – Angola, Sierra Leone and Zaire (Katanga) – are those with readily available mineral resources. These countries attract direct foreign investment. According to Breytenbach (2002b:7), the 1998 World Investment Report found that the major reason for foreign direct investment in Africa is "resource-seeking" and that investors hardly make a distinction between democracies and non-democracies (for example between Botswana or Angola and Equatorial Guinea). Mineral resources attract lawful foreign direct investment, but unfortunately also mercenaries, as was the case in Katanga in the 1960s.

Bayart, Ellis & Hibou (1999:xvi) state that in Africa interaction between the practice of power, war, economic accumulation and illicit activities of various types of forms a particular political trajectory which can only be fully appreciated if it is addressed in historical depth. Characteristics of this trajectory, according to Bayart *et al* (1999), are the exploitation by dominant social groups or by the dominant social actors of the moment, of a whole series of rents generated by Africa's insertion into the international economy in a mode of dependence. Current relevant examples for the purpose of this study are the rents gained from the exports of oil, gold and diamonds, internal financing and aid. Talif Deen (cited in Arnold, 1999:117) mentions that "after companies gain concessions, the firm apparently begins to exploit the concessions it has received by setting up a number of associates and affiliates which engage in such activities as air transport, road building and import and export, thereby acquiring a significant, if not hegemonic, presence in the economic life of the country in which it is operating."

PMCs' involvement in Africa, specifically Executive Outcomes (as a combat type that disestablished in 1999), have questioned the claims that they have ulterior motives when taking on a mission. PMCs may have ulterior (profit) motives, but unlike mercenaries, PMCs are, as a rule, invited by the host state and in the cases of the USA and the RSA, their home states have legislation that regulates their

existence. In the case of Angola and Sierra Leone, PMCs were invited, and arguably made the environment more peaceful for their fragile democracies to function, for example for elections to be held. The existence of PMCs therefore, creates an interesting challenge for legislators and policymakers since PMCs regard themselves as providers of security services to those who are in need of expertise and support, and willing to pay for these services.

McIntyre (2004) mentions that the real issue is neither peace or profits nor the plundering of resources but governance and transparency, accountability and rule of law that need to be adhered to. Smith (2002:22) believes that the use of private militaries has not worked, because regulating them would need international machinery and a political consensus that few are interested in establishing. Smith (2002) states the unravelling of the Equatorial Guinea “rent-a-coup” plot was a palpable hit for the anti-private military lobby and a blow for those companies edging towards respectability.

PMCs could therefore be emerging as valuable players in foreign policy strategy. The latter is a topic that needs to be explored on its own. Pre-1990 attempts to enable market dynamics to determine the securitization of African issues failed. Aning (2000:31) states that it is owing to the bipolar nature of international relations that the bipolarity established a spurious sense of ethics and morality in international relations and continued to be informed by the disreputable notion of mercenary activities, despite the privatisation of the security/military industry.

The recent war of the “coalition of the willing” in Iraq demonstrates the PMC/F industry is growing activity. The coalition was made up of mainly the USA and the UK, but also of Australia, Poland, Romania, Palau, Netherlands, Costa Rica, Iceland and Afghanistan. Private contractors, rather than the military, benefited from the outsourcing and civilianising of military and security functions in war-torn Iraq. This became a very lucrative marketplace for a special type of PMC. They are allowed to do so, because their functions are aligned with the national security interests of the major partners (USA and UK). “Indeed, the ratio of private contractors to US military personnel in the Gulf is roughly one to ten, ten times the ratio during the 1991 (Gulf) war” (Bredemeier, 2003:E01).

Aning *et al* (2004) ask the questions: “is it legitimate to hire the services of a mercenary to train a state’s military once the mercenary is not involved in any act of hostility?”, and “would a government be violating its compliance with CEMA by contracting the services of a mercenary group to maintain its territorial integrity and sovereignty in an armed conflict with a sub-state actor group?”

The less immediate question is whether these PMCs can evolve into something controllable and within the rules of the states or organizations that hire them? One can be certain that the larger powers will resort to legal constraints where PMCs are becoming too threatening or influential? The effectiveness of PMCs must, however, not be underestimated. According to Brooks & Solomon (2000:33), PMCs have proven their ability to push low intensity conflicts to settlements, and they have shown their willingness to enter, and end seemingly intractable conflicts, where superpowers were reluctant to enter or where Security Council members simply vetoed international intervention.

Singer (2004b:535) emphasises this point in saying that PMCs, being service-orientated businesses, operating on a global scale and consisting of small infrastructures, have the ability to transform and circumvent legislation, or escape prosecution. A further point of concern is the lack of co-operation between the states and international organisations to enforce and implement regulations made to regulate and monitor PMCs. A workable regulation solution for PMCs must therefore be created, by taking into account all the relevant laws and information that deal with this polemical topic.

There are, however, a large variety of PMC involvements in the African context whose outcomes may differ. This study does not regard EO and the MPRI as the only PMCs operating in Africa. Other PMCs are referred to throughout the study where relevant and where further substantiation is needed to prove or disprove certain claims. The two case studies (Executive Outcomes in Angola and MPRI in Equatorial Guinea) are used to shed light on PMC operations. The need to establish a regulatory framework to serve as international guidelines under which PMCs must operate is crucial to the debate, and all the current laws and treaties

and relevant information are assessed. The problem that warrants the study therefore is whether PMCs can be turned into something useful (such as peacemakers) through better regulation and whether such legislation will be sufficient.

1.2 Purpose and significance of the study

This thesis evaluates and explores the function of Private Military Companies on the African continent and helps in creating a better understanding of the workings of PMCs in Africa. Why Africa? “Man developed in Africa. He has not continued to do so there” (O’Rourke, 1987:3). Adams (2002:58) states that the rapid growth of these PMCs strongly suggested that nation states might be losing their monopoly over military means. This could indeed be very worrying since the modern state has the right to employ force and especially deadly force through military means. Some observers state that any compromise of that monopoly would be very significant indeed (Howe, 1997). Spearin (2000) also states that gone are the assumptions that in the weak state environment, the host government would be willing or able to provide security for the populace, let alone ensure that humanitarian operations would be able to proceed relatively unmolested.

The purpose of this study is also to assess whether PMCs can be held accountable (McIntyre, 2004) and to whom: the international community, home states, host states (or the masters of profit, perhaps crime syndicates). The real question that arises in the purpose of this thesis is whether proper regulation can make them legitimate. The issue cannot be profits alone, because if that were the case there would be no place for multinational corporations anywhere in the world whose main aim is to generate profit for shareholders. The distinction is made between the workings of the advice, training and providing specialised services types of PMCs and the combat types of PMCs. This is done to determine if there are similarities in the workings of PMCs in Africa. However, all PMCs are controversial, none the more so than the combat types which invite comparisons with mercenaries. In modern law there is no place for mercenaries.

The focal points of this thesis are therefore:

1. The description of the origin and types of PMCs.
2. The comparison of the services that PMCs supply to that of traditional mercenaries.
3. The analysis of the current regulations regarding PMCs and mercenaries, focusing on those regulations of the supplying countries, hosting countries, international organisations, and regional organisations.
4. The assessment of the involvement of PMCs in Africa (specifically in Angola and Equatorial Guinea owing to their similar littoral position in Africa, oil-driven economy and well documented PMC involvement).
5. A conclusion stating whether legislation, extraterritorial applications of legislation, and the regulatory framework are sufficient and whether PMCs could add value to peacekeeping on the African continent if regulated effectively.

The above-mentioned focus areas are approached and substantiated by the chapters of the thesis in the following way:

Chapter 1 introduces the topic and also includes the problem statement of the thesis together with the purpose, significance and research methodology. The concept of Private Military Companies is categorised into three types, namely Mercenaries and PMCs, specialised non-combat services also referred to as Private Security Companies (PSCs) and lastly combat services. Chapter one also explains that the topic is explored in an unbiased, objective manner, without falling trap to normative statements or claims. One could argue that it is impossible to practice value-free research in the social science and that even the topic and the approach, although not consciously done, could be based on normative considerations. Academic sources are used to evaluate the subject matter and the application of relevant information on the topic is used extensively.

Chapter 2 deals with the regulatory framework regarding PMCs and mercenaries. The objective of this chapter is to bring to light the need to regulate PMCs in Africa and worldwide, by focusing on the international (Geneva and UN conventions) and

regional (AU, SADC) arena, and the countries (USA, RSA, Angola and Equatorial Guinea) involved in this study regulations that deal with the subject matter of PMCs and mercenaries. This needs to be done to determine if legislation is adequate, has reached its sell-by date and where and how it can be improved if possible.

Chapter 3 touches on one of the most well-known Private Military Companies, namely Executive Outcomes (as a combat type) and their involvement in Angola. This chapter conceptualises the problem statement and takes a look at the concepts of traditional mercenaries and private armies or Private Military Companies. The functions they fulfil in establishing peace and/or maintaining peace on an African context. This is necessary to test the validity of claims made by Executive Outcomes on effectively establishing peace in Angola.

Chapter 4 focuses on a second type of PMC, namely MPRI and its involvement in Equatorial Guinea. The MPRI is very closely linked to the US government and this study tries to establish if the MPRI is aligning its ventures with US national interest. MPRI claims to provide specialised services, advice and logistical support. Its involvement in Equatorial Guinea and the reason why some Western Governments find PMCs acceptable are examined.

Chapter 5 serves as a concluding chapter in which all the findings are assessed to help in exploring further studies on the functions of private military companies in Africa, effective regulatory ideas, the functions of peacekeepers (UN's security legs that are overstretched) or plunderers for profits, and the escalation of multinational companies' interests. Are these PMCs effective? Is regulation sufficient? What are their advantages and disadvantages, and how will they be effective in the future and in which kind of operations?

1.3 Research methodology

This is a literature survey that seeks descriptive and comparative information relevant to the purpose of this study. It deals with that information qualitatively. No empirical research has been conducted. It is therefore not an opinion survey as no questionnaires have been completed, although interviews with knowledgeable

people have been conducted. Newspapers and highly regarded academic resources have been used in the study of the workings of PMCs on the African continent.

The topic of this study is very polemical (especially where dealing with the combat types) and controversial. It is therefore important to be unbiased and as objective as possible. Through analysing the position of PMCs in Africa, the strengths and weaknesses have been evaluated to assist in issuing a balanced assessment. This was done by relying on relevant academic sources especially the work by Cilliers & Mason (1999) regarding the privatisation of security in war-torn African societies, Shearer (1998b) on *Private armies and military intervention*, Arnold (1999) regarding mercenaries and the third world, McIntyre (2004) on *Private military firms in Africa: rogue or regulated*.

Apart from the research about the function of PMCs in Africa, attention is focused on international law, the UN and other conventions, the laws of home countries such as the RSA, and the USA, and also the laws – if they exist, of host countries such as Angola and Equatorial Guinea. This might bring clarity to the questions about regulation. Although legislation was reviewed in 2005 in South Africa, the focus in this study is only on the *Foreign Military Assistance Act, 1998 (Act No. 15 of 1998)*. Limitations of the study further includes the lack of information from Angola and Equatorial Guinea on mercenaries and PMCs and the regulation thereof.

1.4 Concepts

1.4.1 Mercenaries, Private Military Companies or Private Military Firms (PMCs/PMFs) and Private Security Firms

The origin of and the rationale behind the concept of PMC will be explained in detail. This study explores why the concept of PMC differs vastly from that of mercenaries or “dogs of war”, by exploring the definitions of the above-mentioned concepts as summarised in an international, regional and national framework. De Coning (2006:11) recommends that the use of the term Private Military Companies

(PMCs) be restricted to those who offer offensive security services and the term Private Security Companies (PSCs) to those who offer defensive security services. There are also companies that specialise in providing logistical and support services, and also companies that offer all of the above-mentioned. “From a UN, AU or national Government perspective it is important to make this distinction, because while some non-lethal logistical and other support services are increasingly being outsourced to ‘private contractors’ in the UN and AU peace operations, it is highly unlikely that the UN or AU will outsource those aspects of peace operations that may involve lethal force” (De Coning, 2006:11).

1.4.2 Are PMCs mercenaries in disguise?

PMCs are here to stay since more and more departments of governments are being privatised. PMCs will always wangle themselves into a new robe or uniform but beyond that, are they “different sauce but same meat?” There is a significant presence of PMCs in Africa (Leander, 2004:7) supplying the demand to fill the security gap (Mandel, 2002) and looking after certain countries’ national interests (for example oil) by trying to bring stability to the areas they are contracted to. Isenberg (2000) mentions that PMCs are trying to break into new markets and obtain new resources, as well as protect existing infrastructure in areas often troubled by violence.

With more and more companies who consider themselves as private security companies and who want to shake the tarnished image and distinguish them from mercenaries or so-called “guns for hire”, it is important to try to establish their standing on the scale of international law. Jackson (2002:38) states that PMCs and Private Security firms are more or less the same but that PMCs are prepared to participate in combat situations. Sandoz (1999:201) goes even further and states that proper investigation of these private security firms is necessary to determine if they are compatible with international law. If so, do they also meet the requirements and more precise framework of the international humanitarian law? Why then do they need to meet the requirements? Jackson (2002:39) considers it to be twofold: to control undesirable activities such as mercenarism and human rights abuses and to make PMCs accountable for their activities and also the countries that acquire their services.

O’Brien (2000) concurs that PMCs are not mercenaries, nor are they the ”new mercenaries” (as often referred to); this could only be the case if mercenarism had disappeared entirely, which it hasn’t. Mercenaries, in the true sense of the word, are still actively (Sage, 1999) fighting for financial gain and conspiring to oust governments, for example the “White Legion” during the 1996-1997 Zairian conflict (O’Brien, 2000). Therefore it would not be completely fair to brand PMCs as the “new mercenaries”. EO has claimed that it did not conduct mercenary activities. Regardless of the semantic definitions one prefers hired foreign troops who conduct offensive operations and receive salaries from private contractors in excess of any national defence force’s pay, are mercenaries (Pech, 1999:104).

Today's PMCs are unlike the mercenaries of a few decades ago (Weinberg, 1995). “Many of today's companies exhibit a distinct corporate nature and a desire for good public relations. The companies' goal of obtaining contracts encourages them to control their employees' actions. Private firms have a large pool of qualified applicants, due to worldwide political realignments and defence cutbacks since 1989 ...” (Isenberg, 2000). O’Brien (2000) agrees on how PMCs differ from mercenaries in that “they (PMCs) are organised along corporate lines (including boards of directors, share-holdings, and corporate structures), their work has a clear contractual aim and obligation to their clients, and they engage in military operations – across the spectrum where necessary”.

PMCs have a unique and remarkable ability to act as a force multiplier, working with local forces and nullifying problems of scale. PMCs can be used to pacify areas of ethnic tension, provide peacekeeping services, oversee truce monitoring operations, protect NGO programmes, undertake humanitarian rescue operations, and if necessary, even conclude wars decisively (Brooks &Solomon, 2000:33).

Kwok (2006) concurs that the typical PMC employee is not a direct descendant of the mercenary of the past. Pejoratively labelled the "whores of war" or the "soldiers of fortune," personnel from private military companies (PMCs) have been receiving undue negative media attention because their duties seem so similar to mercenaries of the old-fashioned variety. PMC employees do not work for multiple

employers at once and are not officially assigned to direct combat situations. O'Brien (2000) states that privatised policing and private and commercial security have been seen in most Western societies as an acceptable capability for a state to have. Private military operations should not be seen as being different and therefore, not be regulated any differently to these two predecessors.

It should be noted that the *Article 47 of the First Additional Protocol of 1977 to the Geneva Conventions* definition of a mercenary is cumulative, i.e. a mercenary is defined as someone to whom all of the above (*see 2.2*) apply. Sandoz (1999:209) states that international law recognises a role for civilian support specialists on the battlefield which specifically precludes their inclusion as mercenaries. This results in the international recognition that private military organisations are not mercenaries and are in fact legitimate national corporations organised in accordance with the legal codes of their respective home countries (Sandoz, 1999:209).

Shearer (1998b:18) shares this view and states that if contracted "help/fighters" become members of the countries' military they will avoid being branded as mercenaries. *Article 47* does not apply in a civil war (a major concern) and several large international role players (US and France) are not parties to the agreement ("Protocol Additional GC 1977" (APGC77) (Shearer, 1998b:19).

The above definitions and criteria applied to PMCs could allow for problems to occur in proving the motivation of someone accused of mercenary activities. Shearer (1998b:18) states that especially the requirement that mercenaries take a direct part in hostilities, as required by sub-paragraph (b) of *Article 47 of the First Additional Protocol of 1977 to the Geneva Conventions*, would therefore exclude individuals acting as foreign military advisers and technicians. Therefore MPRI and DynCorp are excluded. Adams (2002:61) also mentions that the convention only applies in situations of international armed conflict. One can therefore question the effectiveness because according to the *United Nations Report on the Question of the use of Mercenaries as a Means of impeding the exercise of the right of peoples to self-determination*, most mercenary activity is in intrastate conflicts. Under the Geneva Convention, if a soldier is captured by an enemy, he/she must be treated

as a lawful combatant and therefore a "Protected Person" which for a soldier is as a Prisoner of War (POW) until the soldier has faced a competent tribunal (GC III Art. 5).

That tribunal may decide that the person is a mercenary using a criterion in APGC77 or some domestic law equivalent. At that point the mercenary becomes an unlawful combatant but must still be "treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial", because he/she is still covered by the fourth *Geneva Convention Article 5*. The only exception to GC IV Art 5 is if he/she is a national of the authority which is holding him/her but in which case he/she would not be a mercenary under APGC77 Art 47.d.

While the United States governed the country, US citizens who worked as armed guards could not be called mercenaries because they were "nationals of a party to the conflict" (APGC77 Art 47.d). With the handover of power to the interim Iraqi government it could be argued that unless they declared that they were residents in Iraq, i.e. "residents of territory controlled by a party to the conflict" (APGC77 Art 47.d), they were now mercenaries. It should be noted that coalition soldiers in Iraq who are supporting the interim Iraqi government are not mercenaries, because either they are part of the armed forces of a party to the conflict or they have been "sent by a state which is not a party to the conflict on official duty as a member of its armed forces" (APGC77 Art 47.f).

Distinguishing between mercenarism and private military is a step in the right direction. The whole industry will render itself to become more transparent, instead of tumbling into grey areas of technicalities. According to O'Brian (2002), this Act is, despite its faults and limitations, a strong example to build on in the UK. South African legislation regulates both the existence of the companies (by forcing them to be licensed to operate) and their operations (by making them seek licensed approval for each contract undertaken). The aim is to ensure that the companies are monitored after they have been authorised, as well as ensuring that they are individually licensed for the types of services they wish to provide (Creehan, 2002).

Mercenaries:

Aning quotes Nathan (1997) who defines mercenaries as soldiers hired by a foreign government or rebel movement to contribute to the prosecution of armed conflict, whether directly by engaging in hostilities or indirectly through training, logistics intelligence or advisory services and who do so outside the authority of the government and defence force of their country (Aning, 2000:30). The *Concise Oxford English Dictionary* (1991) defines a mercenary as "a professional soldier serving a foreign power". This is a very broad definition which could also include various legal forces such as the Swiss Guard and the Ghurkha Soldiers. Brayton (2002:306) defines mercenaries as soldiers who are "foreign to the conflict", "motivated chiefly by financial gain", and "in some cases they participate directly in combat."

Mercenaries are usually zealous adventurers, fighting for money and do not have a very high regard for laws. They just want to get the job done, using whatever means they deem necessary to achieve the goals, and to get paid and to get out. The difference between PMCs and Mercenaries, according to Brooks & Solomon (2000:34), is that PMCs behave like normal companies. Their primary motivation is long-term profit, and they are constrained by domestic and international laws. Freelance mercenaries are motivated by short-term profit or a sense of adventure. They are often stateless and show little regard for rule of law. These differences are critical.

PMCs/PMFs:

The two types of PMCs that the study focuses on are the combat type of PMCs and PMCs that provide specialised non-combat services, also referred to as Private Security Companies (PSCs). Harris & Moller (2004:35) state that three types of services may be offered by PMCs: combat services, advice and training, and specialised services (for example airborne surveillance and signal interception) with military application.

Smith (2002:104) states that PMCs are different from other private means of violence (such as terrorism and warlordism) in scope, purpose and legal form. Smith (2002) also states that they differ significantly, for example, from mercenaries, the familiar soldier for hire. Mercenaries actively take part in conflict for financial gain, where it is claimed that PMCs do not actively take part in conflict. According to Smith (2002:105), world events in the early 2000s publicised another means of privatised conflict – the private militia or army lead by a warlord, and they are just a step above the traditional mercenary. One of the biggest challenges facing the policy- and lawmakers is to define PMCs (especially the combat types) and mercenaries clearly.

Shearer (1998b:21) states that PMCs advertise their services and are legally registered (often in an offshore tax haven), and that PMC personnel are employed within a defined structure, with established terms and conditions, and work with a degree of organisation and accountability to the company. The company, in turn, is answerable to its client, often under a legally binding contract.

PMCs' contractors are civilians (in governments, international and non-governmental organizations) authorized to accompany a force in the field. Hence the terminology "civilian contractor" is sometimes used. PMCs may use force, and can therefore be defined as: "legally established enterprises that make a profit by either providing services involving the potential exercise of force in a systematic way and by military means, and/or by the transfer of that potential to clients through training and other practices, such as logistics support, equipment procurement, and intelligence gathering" (*http://www.privatemilitary.org/definition.html* / Ortiz, C. last revised 24 June 2007). The term "potential" is used because the mere presence of a PMC can deter aggressors from considering the use of force as a viable course of action. A PMC does not have to play an actual or potential military role; a PMC's involvement may well be directed towards enhancing the recipient's military and security capabilities. (Ortiz, 2004:206)

Private Security Firms:

According to Harris & Moller (2004:34), privatisation of security can have a number of meanings. It can mean private security company personnel employed to protect economic assets owned by a government or transnational company, or to advise and train the local military. It can also include the transfer of non-core activities currently undertaken by the military to other government departments or civilian bodies (civilianisation).

In Angola, for example, the government makes it a requirement for foreign investors that they provide their own security – usually by hiring a private company. Their job is similar to that done by security companies in the domestic context; some estimates suggest that the ratio of private security guards to police in developed countries is 3:1. In less developed countries it may be 10:1 or more. Where companies provide services overseas this will usually be through a local subsidiary subject to local law (Straw, 2002).

1.4.3 Training provided by PMCs

Training is a major service provided by PMCs. In some cases it may be linked to combat – as was the case with EO's training in Angola and Sierra Leone. Or it may be free standing. Companies like MPRI, DynCorp and Vinnell fall in this category and have close links with their home government (the US) and regard themselves as normal and legitimate businesses, providing a specialised service to their clientele. Advice may cover anything from advice on restructuring the armed forces to advice on purchasing of equipment or on operational planning. They (MPRI in Bosnia and Vinnell in Saudi Arabia) provide specialised training for national and palace guards or troops (Misser & Versi, 1997:12 and Zagorin, 1997:48).

1.4.4 Specialised non-combat services also referred to as Private Security Companies (PSCs)

These categorised PMCs/PSCs provide security services (that include airborne surveillance and signal interception) abroad for companies, governments and for

other bodies, including the UN and some NGOs. Falling in this category and referred to as PSCs, it can be difficult to distinguish them from PMCs. An illustration – admittedly an extreme one – of the way in which functions may merge is provided by the case of the Ghurkha Security Guards who actively took part in combat in Sierra Leone (Straw, 2002).

Brayton (2002:308) describes PSCs as companies that provide highly specialised services with military application, although these groups are themselves not primarily military or paramilitary in organization or in method. Although members of such an organization may not necessarily have military experience or training, they possess skills and abilities with military and also civilian use. These companies according to Brayton (2002) are smaller than PMCs and they perform functions such as personal protection, signal interception, computer cracking, secure communications and technical surveillance. These types of services are carried out by US companies like MPRI and DynCorp. Smith (2005:22) states that PSCs are restricted to bodyguard work, protecting buildings and pipelines. Recently a number of private security companies have become involved in fisheries protection, or in training for protection against pirates. Both of these tasks might equally well be undertaken by private military companies (Straw, 2002).

1.4.5 The combat type of PMC

This category is very controversial because of the similarities with mercenaries. The international community feels that taking directly part in hostilities implies that there is a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and place where that activity takes place (Sandoz, 1999:209). Smith (2005:22) sees PMCs as companies that not only train soldiers (see above), but that also undertake offensive operations. EO and Sandline International fit into this category.

It is widely documented that EO and Sandline International did actively take part in hostilities in Sierra Leone and Angola. Cilliers & Mason (1999:2) state that EO was a radical form of privatisation of security in Africa and was an extension of more legitimate personal protection services. Spicer (1999) argues that PMCs are defined as those organisations which do more than provide passive assistance in

areas of conflict. O'Brian (2000:62) states that PMCs represent the ultimate evolution of private means of violence and defines a PMC as "a legally chartered company or organisation organised along business lines and engaged in military operations across the spectrum of conflict".

Cilliers & Mason (1999:2) state that "companies such as Executive Outcomes and Sandline International transcend the role of traditional security consultants – they are, in fact, private paramilitary organisations which style themselves as 'military consultants'. They employ former soldiers and, in many of their activities, act in a manner indistinguishable from classic mercenaries at the behest of their economic or political paymasters." "We offer a variety of services to legitimate governments, including infantry training, clandestine warfare, counterintelligence programmes [cointelpro], reconnaissance, escape and evasion, special forces selection and training and even parachuting," adds Barlow (1998). PMCs are structured and have a responsibility to themselves to keep their act together if they do want future contracts, whereas mercenaries are without that corporate structure and pressure to keep their slate clean for future work.

CHAPTER 2: REGULATORY FRAMEWORK REGARDING PMCs

2.1 Establishing a workable regulatory framework

In the 1960s mercenaries became notorious in Africa, especially in the Congo, and were regarded as an offspring of colonial powers. It is, however, in Africa that the PMCs thrived and prospered although there were laws that prohibited them from operating on this continent. It is important to mention that relevant regulators regarding the topic define mercenaries, but not PMCs, therefore creating a legal loophole by not defining PMCs. This is critical to the debate, since there are differences between PMCs and mercenaries. There are also differences in the definitions of conflict and humanitarian intervention. According to Cilliers (2005:120) the problem with the debate on “guns for hire” is that it is increasingly difficult to draw the line between legitimate government contracts to outsource specific aspects of the application and support of armed forces, and mercenary activity by foreign nationals with financial motives.

The involvement of Executive Outcomes as a combat type of PMC and other PMCs, such as MPRI operating in Africa, brought along interesting discussions on challenges regarding peacekeeping and the security industry in general. Using paid military forces is, however, not a new phenomenon in war. The word soldier is derived from the word ”soulde” meaning ”pay”; a ”commission” and was in effect a contract to hire men. Even Alexander the Great and Hannibal employed mercenary forces. In Europe many commanders preferred them to recruited forces until the creation of national armies in the 19th century.
(*http://www.ippnw.org/MGS/V7N2Selber.pdf* /Author unknown)

The purpose of the international humanitarian law, according to Sandoz (1999:201), is to preserve a measure of humanity during the conduct of war. The bottom line of the problem is that the regulatory and legal issues that deal with PMCs are very vague, and the archaic definitions and regulations (that of mercenaries) are not applicable to this modern day phenomenon of privatising armies and providing security services. Warfare has seriously changed rapidly, an example being the bombings in New York on 11 September 2001. To succeed in

its goal to preserve a measure of humanity during the conduct of war, the international humanitarian law therefore needs to be amended to cater for new phenomena in war, for example PMCs and terrorism conducted by cell-groups and faceless enemies.

Ideally, there would be no cause for PMCs and their staff getting involved in legal cases and everybody will respect the rule of law, but unfortunately and realistically that is not the case. PMCs are often criticised owing to their apparent immunity to legal challenges. They often work for weak states that are loath to risk losing the security provided by the PMCs, and are thus willing to overlook isolated criminal acts. While PMCs are generally subject to the laws of their home countries, legal challenges have been rare. A more effective legal framework would help legitimise the operations of PMCs and encourage co-operation by actors who have previously shunned private soldiers. When drawing up guidelines, it is important that PMCs be allowed a good deal of latitude in their operations, but within the parameters of law.

The *1907 Hague Convention on Neutral Powers* is perhaps the earliest formalised convention regarding international war laws in a modern state system (Singer, 2004b:526). Whilst the convention vested certain legal rights in neutral parties and persons in war, it neglected to impose on states any sanction to restrict their own nationals from working for other parties or foreign powers. Nationals for hire did not commit an international crime and were treated like indigenous soldiers (Hague Convention 1907). With the *Hague Convention* not making provision for PMCs there is a serious gap in the regulatory framework. There are, however, restrictions on soldiers for hire. Sandoz (1999:206) states that a private company can lawfully provide support for a struggle against a government only if, within the framework of the UN, both the illegitimacy of the government and the legitimacy of those engaged in the struggle are indisputably acknowledged. Sandoz (1999:206) mentions that if the territory of a state is entered without the government's consent it will be a violation of sovereignty. The problem is that the UN is very cautious when ruling on a government's legitimacy. The lacklustre viewpoint of the UN does not, however, entitle private entities to decide if support given to any one of the role players is just or lawful.

McIntyre (2004:103) states that little has been done in the way of developing regulatory frameworks for the private military industry that could effectively prevent PMCs from going rogue. Perhaps most significantly, according to McIntyre (2004), many PMCs are anxious to see the development of rational regulatory frameworks and are willing to submit to the monitoring of their activities. The development of benchmarks for good (and ethical) business practice opens the doors for the legitimisation of firms and thus more contract opportunities, but also for the civil oversight of the industry.

According to Arnold (1999:123) “a high point of anti-mercenary sentiment was achieved when western mercenaries captured in Angola early in 1976 were put on trial later that year in the presence of eminent jurists and observers from around the world. Subsequently, there were few protests when the leading mercenaries were executed and others received long prison sentences and no one argued that they had been punished unfairly.” Although mercenaries changed their image and opted for a clean cut, corporate look, legislation has not yet caught up regarding mercenaries.

For the purpose of this study the focus is only on the Geneva Conventions, Article 47 of the *First Additional Protocol of 1977*, Article 1(1) of *the AU Convention for the Elimination of Mercenarism in Africa (CEMA)* adopted from the OAU *Convention for the Elimination of Mercenarism in Africa of 1977*, the US *Arms Export Control Act of 1968*, the *Foreign Military Assistance Act of the Republic of South Africa of 1998* the *UN General Assembly in 1973*, adopted *Resolution 3103* with the title: *Basic principles of the legal status of the combatants struggling against colonial and alien domination and racist regimes* and The *UN International Convention against the Recruitment, Use and Financing and Training of Mercenaries of 1989.*

2.2 Geneva Conventions regarding PMCs and Mercenaries

Article 47 of the First Additional Protocol of 1977 to the Geneva Conventions defines a mercenary as one whom:

(a) is specifically recruited locally or abroad in order to fight in an armed conflict;

(b) does, in fact, take direct part in the hostilities;
(c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that party;
(d) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
(e) is not a member of the armed forces of a party to the conflict; and
(f) has not been sent by a state which is not a party to the conflict on official duty as a member of the armed forces.

It could be argued that the convention and APGC77 Art. 47 are designed to cover the activities of mercenaries in post colonial Africa, and do not adequately address the use of private military companies by sovereign states.

2.3 The UN conventions, treaties and regulations regarding PMCs and Mercenaries

The first attempt by the UN to condemn the use of mercenaries against movements of national liberation was named *Declaration on Principles of International law concerning Friendly relations and Co-operation among States in accordance with the Charter of the United Nations (1970)*. This declaration, although condemning mercenaries, placed the enforcement duties on states. The problems regarding this declaration are similar to the ones that are dealt with today, mainly the apathy or inability of states to deal with the issue. The *UN International Convention against the Recruitment, Use and Financing and Training of Mercenaries of 1989* is a further attempt by the United Nations to outlaw all mercenary activities. At first only 19 out of the requisite 22 states have ratified or acceded to this convention, until 2001 when the necessary signatures were added (Adams, 2002:62).

The *UN International Convention against the Recruitment, Use, Financing, and Training of Mercenaries (1989)* was drafted to protect states from the unlawful use or threat of force against their political independence and territorial integrity. It fails to define PMCs but it is the only international instrument applicable to both

mercenaries and PMCs, though it does not ban mercenarism outright, only those activities that undermine a state's political stability or territorial integrity (Beyani & Lilly, 2001:27).

The ***U.N. International Convention against the Recruitment, Use, Financing and Training of Mercenaries 1989*** defines a mercenary as any person who

- is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at: overthrowing a government or otherwise undermining the constitutional order of a state, or undermining the territorial integrity of a state;
- is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
- is neither a national nor a resident of the state against which such an act is directed;
- has not been sent by a state on official duty; and
- is not a member of the armed forces of the state on whose territory the act is undertaken.

(International Convention against the Recruitment, Use, Financing and Training of Mercenaries, 1989)

The UN conventions and legislation fails to define PMCs and only defines mercenaries. The Brahimi Report (2000) underscores this fact and describes the United Nations' inability to bring more men, money, and thought to the mission of peacekeeping. Although the understaffing of the UN secretariat is not completely relevant to the regulation of PMCs, the latter, if thoroughly regulated, could fill these shortages in the peacekeeping sectors. The report thus reveals the extent to which today the UN Secretariat is under-staffed and under-funded. At the time the report was completed (July 2000) the DPKO had only 32 military officers to plan, recruit, equip, deploy, support, and direct some 27 000 soldiers that comprised the 15 missions underway. UN police forces faced a similar situation: staffs of only nine police officers working out of UN headquarters were called upon to support 8 000 UN police in the field. The report thus concluded that the DPKO administrative

budget (which was equal to 1/50th of the field teams' budget) was utterly insufficient to support the teams in the field.
(*http://www.un.org/peace/reports/peace_operations/report.htm* /Brahimi,L, July 2000).

These sobering numbers illustrate the core of the report. The United Nations currently lacks the resources to effectively maintain its peacekeeping mission. This also illustrates clearly the UN's lack of independence and inability to take command where international crisis situations occur. Another factor crucial to the success of UN missions is the ongoing political support of influential member states. While the Brahimi Report fails to address this final point, participants drove home the fundamental importance of gaining international support (especially from the United States) for UN missions.

Participants illustrated the cross-cutting character of this issue: (1) "All the recommendations contained in Brahimi for improving UN peacekeeping activities depend on the will of the U.S. Congress to fund the program," (2) "There is a consistent undercurrent within the UN of dissatisfaction and disappointment with U.S. failure to support the institution," and (3) this dynamic is "eroding America's international standing."
(*http://www.un.org/peace/reports/peace_operations/report.htm* /Brahimi, L. July 2000)

In summary, the rationale behind the Brahimi Report (2000) is threefold: (1) to underscore the growing need for peacekeepers around the world, (2) to bring to light the UN's failure to ramp up administrative and logistical support of peacekeepers in the field, and (3) to propose a series of changes to improve the effectiveness of the DPKO.
(*http://www.un.org/peace/reports/peace_operations/report.htm* /Brahimi, L. July 2000)

The Brahimi Report (2000) does not contain any reference to PMCs. This could imply that the UN denies the use of PMCs, or that the UN wants to keep that alley of employing PMCs open for further exploration. The UN General Assembly in

1973, adopted Resolution 3103 that states “The use of mercenaries by colonial and racist regimes against the national liberation movements’ struggling for their freedom and independence from the yoke of colonialism and alien domination is considered to be a criminal act and these mercenaries should accordingly be punished as criminals.”

2.4 The OAU/AU conventions regarding PMCs and Mercenaries

The OAU Convention for the Elimination of Mercenarism in Africa (1977, entered into force in 1985) is another international instrument in force specifically applicable to mercenary activity. It, however, fails to define PMCs. PMCs are not regulated by the Convention for the Elimination of Mercenarism in Africa. (Musah & Fayemi, 2002:36)

The OAU Convention for the Elimination of Mercenarism in Africa of 1977 provides an alternative definition in article 1. *Article 1(1)* of *the AU Convention for the Elimination of Mercenarism in Africa* (CEMA) defines a mercenary as any person who

- is specially recruited locally or abroad in order to fight in an armed conflict,
- does in fact take a direct part in the hostilities,
- is motivated to take part in the hostilities essentially by the desire for private gain and in fact is promised material compensation by or on behalf of a party to the conflict,
- is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflicts,
- is not a member of the armed forces of a party to the conflict, and
- is not sent by a state other than a party to the conflict on an official mission as a member of the armed forces of the said state.

(*OAU Convention for the Elimination of Mercenarism in Africa. Libreville, 1977*.)

2.5 South African laws regarding PMCs and Mercenaries

South Africa forms part of the African Peer Review Mechanism but has not yet ratified the OAU/AU convention against mercenaries (Aning, Addo, Birikorang & Sowatey, 2004:60). South Africa, however, drafted and enacted the *Foreign Military Assistance Act, 1998 (Act No. 15 of 1998)*, to eradicate mercenarism. According to Aning *et al* (2004:60) the reason for South Africa's non-ratification of CEMA is that it clashes with the more recent UN obligations and has also experienced constitutional problems in translating its OAU/AU commitments into domestic legislation.

The said Act, however, broadens the definitions of mercenaries and PMCs as follows:

(iii) ''foreign military assistance'' means military services or military-related services, or any attempt, encouragement, incitement or solicitation to render such services, in the form of –

(a) military assistance to a party to the armed conflict by means of –

(i) advice or training;

(ii) personnel, financial, logistical, intelligence or operational support;

(iii) personnel recruitment;

(iv) medical or paramedical services; or

(v) procurement of equipment;

(b) security services for the protection of individuals involved in armed conflict or their property;

(c) any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state;

(d) any other action that has the result of furthering the military interests of a party to the armed conflict, but not humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict; (i)

(iv) ''mercenary activity'' means direct participation as a combatant in armed conflict for private gain; (iii)

The said Act regulates rather than prohibits foreign military assistance. Requests to supply such assistance and all arms-related materials are scrutinised by the National Conventional Arms Control Committee (NCACC) which is chaired by a Minister from a government department that has no direct links with the defence industry. The NCACC performs oversight functions in relation to the intelligence and counterintelligence functions of security agencies. The committee has the power to refuse an application, or to grant a licence. Decisions are based on principles of international legislation, including human rights legislation. Licences may be revoked should there be a change in circumstances in the recipient state. The first successful prosecutions under the Act occurred early in 2004 when a South African helicopter pilot was found guilty of contravening the Act and sentenced to a fine (Aning *et al*, 2004:63).

2.6 United States laws regarding PMCs and Mercenaries

The *Neutrality Act of 1794* made it a misdemeanour for an individual to prepare or depart for a conflict abroad. A new *Neutrality Act in 1937* was introduced, but is interpreted according to Shearer (1998b:20) as only prohibiting the recruitment of mercenaries within the US, and being a mercenary is not in itself a criminal offence. Smith (2002:112) mentions that as the government hires the PMCs to act as the formers agents, the *Neutrality Act* is not violated.

According to Goddard (2001:18) the term "private military company" does not exist within any extant or emerging US joint or service doctrine. Goddard (2001) states that the nearest comparative operational term within the US Army doctrine is that of "contractor" that is detailed within developing the US Army Logistics doctrine. The definition and roles of "battlefield contractors" are detailed within the *US Army publications Army Regulations (AR) 715-9*, *Contractors Accompanying the Force* (1999); *Field manual (FM)* 100-21, *Contractors on the Battlefield* (1999); *FM 100-10-2, Contracting Support on the Battlefield* (1999); and *FM 63-11*, and *Department of the Army (DA) Pamphlet (PAM) 715-16*, *Contractor Deployment Guide* (1998). The *US Army Regulation 715-9* is the definitive document that delineates between the actions of contractors and PMCs. This regulation states that contractors can perform potentially any function on the battlefield except

inherent governmental functions (Goddard, 2001:18). Inherent governmental functions are defined as those "necessary for the sustainment of combat operations, that are performed under combat conditions or in otherwise uncontrolled situations, and that require direct control by the military command structure and military training for their proper execution" (*US Department of the Army, AR 715-9: Contractors Accompanying the Force*, 21).

Contracts that outsource US military functions are governed by the Federal Acquisitions Regulation (FAR) and a defence department supplement (DFARS), but according to Avant (2000:2) these constitute only part of the market for US PMCs. Firms market themselves through the internet and also sell their services directly to foreign governments and other possible interested parties. The regulation additionally states that the conduct of any or all of these inherent governmental functions by contractors may violate the non-combat status afforded to them under the Geneva Conventions.

The *FM 100-21* defines that a contractor is a "person or business that provides products or services for monetary compensation" (*US Department of the Army, FM 100-21: Contractors on the Battlefield*, 1-2). The products or services are limited to those functions of life support, construction, engineering, weapon systems support, and other technical services. The FM specifically states that contractors are not combatants but civilians accompanying the force and that they are generally "assigned duties at Echelons above Division (EAD)" (*US Department of the Army, FM 100-21: Contractors on the Battlefield*, 1- 10). The FM emphasizes that EAD should be indicative of the associated organizational structure as opposed to a location on a map.

Goddard (2001) mentions that *FM 100-21* delineates three categories of contractors. Firstly, theatre support contractors who provide contractual support at the operational level from within the local vendor base. Secondly, external support contractors who provide services that are required in theatre but are not available from the local vendor base. Thirdly, system contractors who provide specific support to material systems throughout their life cycle to include vehicles, aircraft, command and control infrastructure, and communications equipment and weapon

systems such as the patriot missile defence system. Goddard (2001) believes that the US Army doctrine does not recognise PMCs by term but that the US Army doctrine does, however, distinguish contractors from such classification by the conduct and tangible effect of their operations. Contractors conduct logistic support and sustainment operations that are passive to the environment in which they are contracted to operate within. This framework of conduct is pivotal to the retention of a recognised status within the Geneva Conventions as legitimate, non-combat civilians on the battlefield (Goddard, 2001:18).

The *Uniform Code of Military Justice* (UCMJ, 64 Stat. 109, 10 U.S.C. ch. 47) is the foundation of military law in the United States. The *UCMJ* was passed by Congress on 5 May 1950, signed into law by President Harry S. Truman, and became effective on 31 May 1951. The word "Uniform" in the Code's title refers to the congressional intent to make military justice uniform or consistent among the armed services. (*http://en.wikipedia.org/wiki/Uniform_Code_of_Military_Justice* / Author unknown, last revision 02:42, 18 June 2007)

The *UMCJ* only covers transgressions committed by members of the US military, and excludes any civilians that accompany the force overseas. According to Singer (2004b:537) the *Military Extraterritorial Jurisdiction Act of 2000* intended to fill the void by applying the code to civilians serving in US military operations outside the United States. This Act, however, also has its limitations and it is only applicable to civilian contractors who only work directly for the US Department of Defence on military facilities and not for contractors who work for another US agency, nor for US nationals who work overseas for a foreign government or organisation (Singer, 2004b:537). If an American PMC employee who works overseas for a foreign government or organisation is found guilty of committing a crime or offence under any other conditions not mentioned above, only the host state may prosecute him/her if there is a competent legal system to deal with the offence. Immediately loopholes occur in that the host may not be able to prosecute owing to a incompetent judicial system, unwillingness owing to a relationship with the host state government, or the PMC could be opposing the government and is therefore not under their scrutiny.

The *US Arms Export Control Act of 1968* regulates both arms brokering and the export of military services. These services were included in the Act by amendment in the 1980s following the discovery by the State Department that a number of private companies were giving military training to individuals from countries with which the US did not have good relations. This Act now constitutes the primary law in the US that establishes procedures for the sale of military equipment and related services (Straw, 2002).

The Act stipulates the purposes for which weapons and services may be transferred; these range from self-defence to internal security. Defence services are defined as including the provision of and assistance in the design, manufacture and use of defence equipment, any provision of technical data on that equipment, any provision of military advice and any training of foreign units and forces, both regular and irregular. Training includes training delivered by correspondence courses and media of all kinds, and through exercises.

US companies that offer military advice to foreign nationals (in the US and overseas) are required to register with and obtain a licence from the State Department under the *International Transfer of Arms Regulations (ITAR)* which implement the *Arms Export Control Act* (Straw, 2002).

The US Government maintains the right to take action to ensure that licensing provisions are being met. In addition to this licensing procedure, congressional notification is required before the US Government approves exports of defence services worth in excess of $50 M. The US Federal Criminal Statute prohibits US citizens from enlisting or from recruiting others from within the US to serve a foreign government or party to a conflict with a foreign government with which the US is at peace (Straw, 2002).

2.7 Assessment of the regulatory framework

The regulation of PMCs has become an issue of governance and is of utmost importance. The focus needs to be on whether the international frameworks are toothless or not and if the SA and US laws can be applied extraterritorially. In the

post-Cold War context, extraterritorial regulations are, for the most part, designed multilaterally in the interest of peace, or the interests of major powers (Le Billon, Hartwell & Sheman, 2002). Increasingly, multilateral instruments are designed and applied at a regional level rather than on a country-by-country basis. This category includes conditions on multilateral aid, UN instruments, including Security Council resolutions on arms embargoes and financial sanctions, expert panels, UN conventions against transnational organised crime and international terrorism, and the UN Global Compact's efforts to engage private-sector actors in issues of peace and security (Le Billon *et al*, 2002).

The threat of prosecution by the International Criminal Court, recently ratified by the required number of states, may hold promise as a deterrent against violent predation and as an incentive for warlords and other actors to uphold peace accords. Key initiatives and practices have also been developed by other multilateral organisations, most notably the Organisation for Economic Co-operation and Development (OECD), the European Union (EU), the Council of Europe, the Organisation of American States (OAS), and African regional and sub-regional organisations (Le Billon *et al*, 2002).

Currently international enforcement to regulate the PMC industry is uncoordinated. South Africa and the United States lead the way in legislation regarding PMCs. While several countries have domestic laws governing mercenary activity, few of these states have legislation relevant to private military companies. According to International Alert, there are four general categories of national legislation: "those passed to 1) control mercenary activities in response to the requirements of neutrality laws; 2) deal directly with mercenaries and mercenary activity; 3) regulate the provision of foreign military assistance as opposed to merely regulating mercenary activities and direct participation in conflicts; and 4) regulate military services within arms export control systems" (Beyani & Lilly, 2001:28).

UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries 1989

Beyani & Lilly (2001) feel that this convention is limited in its scope, and that it applies only to the country where mercenary activities take place, not to those countries violating its principles. The convention has not entered into force, but it does provide a minimum standard for national legislation. Critics argue that the treaty's timing was poor, it came out when the private military trade started to boom (Singer, 2004b:531).

The high demand for peacekeepers, especially during the 1990s, stretched the United Nations' limited resources. The pressure mounted on the UN to intervene and dismantle dangerous and hostile situations. Unfortunately, in many cases like Rwanda, the organisation failed to meet these daunting challenges. UN military failures seemed to become commonplace. The UN has condemned the use of mercenaries since the 1960s. Ballesteros (1996) characterised mercenaries as politically disconnected from the societies into which they are introduced by governments (also a reason for their popularity) therefore making them instruments for oppression, used to violate human rights and to impede the exercise of the right to people's self-determination. Ballesteros asserts that mercenary initiatives by private companies registered as security firms in a third country were a threat to national sovereignty.

On the other hand the UN is still reluctant to take a definitive stand against PMCs. The UN does take a stand against mercenaries. This is illustrated in the UN General Assembly in 1973, adopted Resolution 3103. Sandoz (1999:204) states that the use of the phrase "these mercenaries" and not "the mercenaries" in the above-mentioned resolution, clearly shows that mercenary activity was identified with opposition to liberation struggles. Brayton (2002:304) mentions that the UN became very concerned about the role of mercenaries and therefore appointed Ballesteros, who reported a growing number of hired fighters. He also expressed his concern on how well equipped and organised these corporations were. Ballesteros also noted that security companies cannot be strictly considered as

coming within the legal scope of mercenary status. (*http://www.unhchr.ch* / Ballesteros, E.)

These statements point out the inability of the UN to diffuse all conflict situations especially where there are low intensity conflicts and a money shortage, the latter hampering the deploying of more peacekeeping soldiers. According to Smith (2002:112) the UN agrees that PMCs do not meet the stated definition of a mercenary. To ban PMCs completely could not just cause them to go underground but could clash with the UN Charter's Article 51, which allows for states to take unspecified measures to protect themselves against attack. Singer (2004b:544) agrees and mentions that without a clear justification, any attempt to ban a new option for states to do so might be in contravention of this clause.

The OAU/AU conventions regarding PMCs and Mercenaries

Beyani & Lilly (2001:25) state that the OAU convention is intended to complement the UN international convention, but is in fact superior to it in many respects, including: defining the elements of the crime of mercenarism rather than only prohibiting the recruitment, use, financing, and training of mercenaries; converting perambulatory principles of the international convention into substantive provisions; and defining the criminal responsibility of states and their representatives. The OAU convention is rarely enforced, however, many signatories continue to violate its principles. It does not apply to private military companies, nor include corporate criminal responsibility (Beyani & Lilly, 2001:25). Political and strategic reasons for the lack of legislation could be because countries want to achieve certain policies without being too active in certain "non–democratic" states or states that are renowned for human rights abuses. The latter mentioned countries might have access to valuable resources that could help countries operating covertly to achieve strategic, political and foreign policy goals. PMCs could therefore be a valuable ally to front governments operating with or in these "rogue" states.

This definition is broader and less technical, but the major weakness with the adopted AU definition is the small number of signatories to ratify this international convention. The AU tries to define mercenaries but fails to define PMCs, although

some PMCs could be included in the definition according to their services rendered and by actively taking part in hostilities. Despite being involved with mercenary activities, South Africa is in favour of the African Peer Review but has not ratified the AU convention regarding mercenaries. South Africa, however, has progressive domestic legislation that combats mercenary activity (Aning *et al*, 2004:2).

Foreign Military Assistance Act of the Republic of South Africa of 1998

This Act carries punitive measures and applies to both individuals and PMCs engaged in mercenarism, defined simply as "direct participation as a combatant in armed conflict for private gain" within South Africa and abroad. Foreign military assistance is not proscribed, but falls under the licensing and authorisation of a separate government body also responsible for approving arms exports. Despite its extraterritorial nature and inclusion of PMCs, the Act has been criticised as being more of symbolic value than being an actual deterrent. Few companies have registered and few contracts have been licensed (Le Billon *et al*, 2002:65).

Aning (2000:32) also mentions that in situations where regime interest and security are considered more important than international ethics, enforcing the above international conventions or following the South African example would be difficult. He states that the South African parliament unwittingly incorporated 28 of the 36 proposals presented by EO into the bill, therefore encouraging as the South African bill is; its impact is limited in the following two main ways:

- the bill seeks to ban South African citizens from participating in such mercenary activities. The immediate effect of this would be minimal because about 70 % of EO operatives are decommissioned and underpaid soldiers from African and European countries; and
- there is a need for change in the perception from African leaders and the larger international community regarding the employment of mercenary services.

United States laws regarding PMCs and Mercenaries

Smith (2002:113) mentions that the State Department's Office of Defence Trade Controls monitors the firms for compliance with the law and current US policy. He also states that in the case of MPRI, some critics argue that although it follows this procedure, the existing control mechanism is inadequate and allows the President of the US to circumvent the intent of Congress. Article 1 section 8 of the *US Constitution*, grants Congress the power to declare war, grant marque and reprisal, and make rules concerning captures on land and water (Smith, 2002). Cilliers & Mason (1999:2,3) agree that the US has strict federal laws and state legislation that require the companies to obtain government sanction before any commitments are made regarding the provision of goods, services, and security to the client.

This drawback could be overcome according to Smith (2002:113) by congressional legislation that reintroduces the granting of letters of marque and reprisal and that provides guidelines for the oversight of PMCs either by the arms export regimes in place at the State Department or by establishing new ones that could include direct congressional oversight. According to Shearer (1998b:20) the US position appears to regard mercenary activity as non-criminal under international law and that mercenaries should enjoy the same status and protection as other combatants.

Avant (2000:2) also states that the *International Transfer of Arms Regulations* (ITAR) reveal problems. She summarises them as follows:

a) it is not clear that outsourcing of military training saves the US government any money;
b) privatising military training may weaken the US armed forces' expertise and capacity for engagement; using private contractors may make implementing the engagement policy easier, but by avoiding public debate, such a practice undermines the democratic process; and
c) there is not enough oversight and control of private firms that sell training directly to foreign countries. (Avant, 2000:2)

Conachy (2004) mentions that the mercenaries in Iraq have complete immunity from Iraqi law under an edict issued by the *US Coalition Provisional Authority* (CPA). Beyani & Lilly (2001:32) believe that "the ITAR is probably the most developed and comprehensive regulation system [capturing] the activities of most private firms in the US supplying defence services abroad." Under ITAR, there is a "presumption of denial" for the provision of military services if they would lead to a "lethal outcome." Effectively, this means that PMCs should not be allowed to engage in or train others for direct combat. However, determinations of this nature are often ambiguous.

The US supports the PMC industry since its activities are aligned with foreign policy activities. As the US is very progressive in its laws regarding the industry, it is highly unlikely to clamp down on PMC activities. Singer (2004b:548) proposes that the US Congress could establish a more consistent and transparent licensing process that specifies oversight of US-based and/or employed PMFs and sets strict and public reporting requirements.

CHAPTER 3: CASE STUDY – EXECUTIVE OUTCOMES AS COMBAT TYPE PMC IN ANGOLA

3.1 Angola's domestic regulatory framework for mercenaries and PMCs

During the research, the Angolan government's position regarding PMCs and mercenaries could not be established. The only information found on the subject matter was that of GIMUN (a simulation of UN debates) by university students. According to GIMUN, the Angolan government supports the view that legislation on mercenaries must incorporate more of the progressive features of international conventions, and should seek to improve the definition of a mercenary, as it stands in article 1 of the *1989 UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries.*
(*http://www.gimun.org/2006/documents/CHR_Angola_.pdf/Security Council* Angola/Author unknown)

The *1989 Additional Protocol Convention* moved this legislation forward by making the use of mercenaries illegal. Article 2 makes it an offence to recruit, use, and finance or train mercenaries. Article 5 binds signatories not to do the above and Article 9 obligates them to punish violations. So far, only 19 countries have ratified the convention and a further nine have signed but not ratified. Moreover it should be noted that at least three of the signatories, namely the governments of Angola, Yugoslavia and the Democratic Republic of the Congo, have engaged or used mercenaries or PMCs since they signed the convention. Although Angola has signed the convention, it is one of the nine countries who have not yet ratified it. (*http://www.fco.gov.uk/Files/kfile/mercenaries.0.pdf*) (Article title Private Military Companies: Options for Regulation author: Jack Straw) (accessed 3 September 2006)

According to the Geneva International Model United Nations (GIMUN) proposal (*http://www.gimun.org/2006/documents/CHR_Angola_.pdf/Security Council* Angola/Author unknown), the Angolan government strongly believes that the definition of mercenarism should refer to participation in international conflicts as well as in internal conflicts. According to the GIMUN proposal, Angola believes that

mercenary activities must be considered a crime in and of itself and must be internationally prosecutable, both because they violate human rights and because they affect the self-determination of people.

It must also be kept in mind that mercenary activity is a complex crime in which criminal responsibility falls upon those who recruited, employed, trained and financed the mercenary or mercenaries, and upon those who planned and ordered this criminal activity. Due attention must be paid to the study and analysis of the various ways in which mercenaries are used and act and of those who employ them, while recognising that this is not merely a legal question of definition, but also a question of actions and situations that affect life, security and international peace. Also, there is a need to distinguish between the activities that are deemed crimes under international law (i.e. terrorism) and those that require criminalisation. (*http://www.gimun.org/2006/documents/CHR_Angola_.pdf/Security Council* Angola/Author unknown)

Mercenaries are widely condemned. But it is the booming of Private Military Companies (PMCs) that is increasingly becoming a policy headache by sidestepping current legislation and regulation. The GIMUN proposal states that the government of Angola believes that the legal and institutional response to the phenomenon of Private Military and Security Services (PMSSs or PMCs as referred to in this study) as it has manifested today is inadequate and urgently needs addressing. A general framework for regulation that would incorporate a minimum universal set of standards from all the regional perspectives towards PMCs should be extrapolated in order to achieve greater transparency in the acts of modern PMCs.
(*http://www.gimun.org/2006/documents/CHR_Angola_.pdf/Security Council* Angola/Author unknown)

Angola supports the view that a combination of international, regional and national legislation is required which specifically targets PMSSs to prevent the involvement of PMSSs into mercenary activities on the continent. Although different regions of the world had and still have their own specific problems in regard to the security industry, the same private companies operate across the world. It might be useful,

therefore, when regulating the private security industry, to have a framework that works uniformly across the board. At the same time, regional mechanisms and national legislation could go beyond those standards to produce more regionally targeted strategies. In particular, regional mechanisms should be explored further as ways of controlling and monitoring PMSSs. Also, national codes that criminalise the mercenary activities of PMCs must be revised and amended. (*http://www.gimun.org/2006/documents/CHR_Angola_.pdf/Security Council* Angola/Author unknown)

According to the GIMUN report, the Angolan government believes that activities of PMCs fall in the "grey areas" of international law. At present only a few countries have included PMSSs in their national legislation and as a consequence PMSSs exist internationally without effective regulation. The government of Angola strongly believes that international regulation would supply the legal framework for these services and provide them with both legitimacy and well-defined laws to abide by. The issue of an appropriate definition and the impact of PMSSs in past and ongoing civil wars must be pointed out, as on the international level there are no laws or conventions dealing specifically with PMSSs.
(*http://www.gimun.org/2006/documents/CHR_Angola_.pdf/Security Council* Angola/Author unknown)

The AU's (with Angola as a member state) attempt to define mercenaries is, however, not watertight, since it is too narrow according to mercenaries' purpose. The definitions would not have included employees of Executive Outcomes in Sierra Leone or Angola, nor anyone else working for a recognised government where training or security consulting is provided. Mercenaries, therefore, freelance their labour and skills to a party in foreign conflicts for fees above those of native counterparts. Malaquias (2001:314) states that "typically, insurgencies are responses to chronic governmental ineptitude and corruption, or to other forms of bad governance. More proximate causes include government insensitivity and ineffectiveness in meeting popular demands. Insurgencies can be ignited either through repressive actions by the government or by calculated actions carried out by legal or illegal opposition groups." The AU's definition is according to Jackson (2002:40) unworkable and has largely been discredited since many of the

signatories (Angola being one of them) have been precisely those who employed mercenaries.

Aning (2000:32) supports Jackson's view and is very sceptical of the implementation of constitutive principles and norms under the OAU/AU against mercenaries only controlled through the goodwill and decency of individual governments (Angola being one of them). Aning (2000) states that "even this slim hope is already being undermined for two major reasons: firstly, since 1990, most of the daring mercenary actions in Africa have occurred under the legitimate purview of sovereign governments like Angola and Sierra Leone; secondly, the far-reaching tentacles of corporatised mercenary activities and their impact on the legislative processes, even in countries prepared to tackle this problem, are not fully realised."

According to the research apart from the GIMUN proposal extensively drawn upon above, there is no relevant legislation regarding mercenaries in Angola since the AU definition of mercenaries does not apply to Executive Outcomes (EO) in Angola. The Lusaka protocol refers to "the repatriation of all mercenaries", but it is well documented that both the government and União Nacional para a Independência Total de Angola (UNITA) have used foreign "security specialists" (usually a euphemism for mercenaries) during their conflict. These foreign security personnel have not just trained and assisted Angolan forces, they have often participated directly in combat.
(*http://www.hrw.org/reports/1996/Angola.htm* / Author unknown.Volume 8 number 1(A). February 1996.)

The Lusaka Protocol signed in Angola in 1994, provided for a ceasefire, the integration of UNITA generals into the government's armed forces (which were to become non-partisan and civilian controlled), demobilisation (later amended to demilitarisation) under United Nations Angola Verification Mission (UNAVEM) supervision, the repatriation of all mercenaries, the incorporation of UNITA troops into the Angolan National Police under the Interior Ministry, and the prohibition of any other police or surveillance organisation. Despite signing the Lusaka Protocol, human rights abuses still took place, both parties, UNITA and Movimento Popular

de Libertaçao de Angola (MPLA) being guilty in this regard. (*http://111.hrw.org/reports/1996/Angola.htm#N_3_#N_3_* / Author unknown.Volume 8 number 1(A). February 1996.)

At the time, EO was deeply involved in the Angolan conflict from 1992 through 1995. Although the Lusaka Protocol was "ignored" and EO maintained some 400 to 500 men in Angola, mostly under contract to the Angolan Armed Forces according to a Human Rights Watch report of 1996 (*http://www.hrw.org/reports/1996/Angola.htm* / Author unknown.Volume 8 number 1(A). February 1996.). Pressure from mostly the US and other countries mounted on to the Angolan government, the latter finally told EO to withdraw in January 1996. Persons associated with EO, in whatever corporate guise thereafter, were still engaged in the Angolan government's efforts to resolve the conflict by military means in 1998, albeit that they provided services that could not fall foul of the definition of "mercenary" (Cleary, 1999:166). It has, however, been reported that some EO men were being redeployed into front companies and are still operative in Angola (Isenberg, 2000).

3.2 EO's background: a South African PMC in Africa

The highly specialised battalions and regiments of the SADF became a bargaining chip for negotiations leading up to create the "new" South Africa. Many soldiers and specialised military personnel were left without jobs and an income (Breytenbach, 2002a:346). Accusing the South African government of betrayal and not keeping promises, a Conservative Party spokesperson handed the then President of South Africa, FW de Klerk, 30 silver coins (collected by anonymous officers) in Parliament. With this act, the party showed its dismay at the disbandment of especially Battalion 32, the latter being a well-representative battalion. Many of these former soldiers, awarded a meagre severance package, were plagued by poverty and desperation therefore mounted (Breytenbach, 2002a:346).

According to Pech (1999:84), Executive Outcomes was set up in 1989 to serve as an intelligence training unit for the SADF Special Forces. Eeben Barlow and Lafras Luittingh (former 32 Battalion recces with later alleged Civil Cooperation Bureau

(CCB) connotations) identified a niche market and with an able and willing supply of manpower that was unwilling to fight under a “backstabbing” new regime, founded Executive Outcomes. Most of these recruits knew no other skills than soldiering and EO provided a solution. Desperation, poverty and disappointment made the soldiers turn to EO as the financial benefits were very enticing. Shearer (1998b:42) states that payment in US dollars meant that, in real terms, EO salaries were around four times greater than regular army wages paid in South African Rand.

Executive Outcomes, a combat type PMC, was founded by Barlow and Luittingh as a “military advisory company … to work all over the world training armies and getting involved in conflict resolution, but more related to the battlefield, not in the political sense” (Hooper, 2002:7). "As a private corporate entity, EO is able to operate without the restrictions of any particular nation's flag leading our soldiers into battle," stated Barlow. "Organisations such as the UN and the Organisation of African Unity (OAU) can make use of EO without partiality in negating the speedy resolution of conflict in any given country utilising our services. Our employees have over five-thousand man (*sic*) years of military knowledge, combat and training experience" (Barlow, 1998).

Barlow also stated that EO “is a professional military advisory group working only for recognised governments” and is equipped with Soviet MiG fighter jets, Puma and East Bloc helicopters, state-of-the-art artillery, tanks, and other armaments. Barlow (1998) also pointed out that EO boasts an array of no less than 500 military advisors and 3 000 highly trained multinational special forces soldiers.

According to an EO proposal in 1992, EO offered the following:

- support services for “... clandestine warfare operations”;
- training of “... freedom fighters” (in other words, insurgency forces);
- procurement of “... any” weapons and equipment;
- the conducting of “... clandestine sabotage actions”;
- conducting of “... specific harassment operations within enemy rear areas”;

- conducting of “... political propaganda operations”; and
- waging of “... total guerrilla warfare behind enemy lines.”

(Pech, 1999:85)

Although EO officially denied a direct operational function, some EO personnel admitted to taking part in combat operations in Angola (Ashworth & Sellers, 1997:17). Nick van den Berg, a senior member of EO, said that there was no paradox in EO’s activities, EO was only concerned with profit and was not interested in ideological wars (Arnold, 1999:116). Venter mentions that the essential tasks of EO members in the endless African conflicts in which EO was involved is to instruct, to protect and to organise. “They also take part in operations. When they are fired upon they respond vigorously. They are prepared to launch preventative attacks if these help save lives” (Arnold, 1999:116).

An EO member admitted on South African television in 1995 that his organisation did not just train soldiers but engaged in aggressive military operations: "A team went ahead to clean up Cafunfo. We followed later and, on the way to Cafunfo, we killed about 300 enemy soldiers. Executive Outcomes was engaged in attacks all the time. It did give some training as well, but the successes of the MPLA could be directly attributed to Executive Outcomes' involvement" (SABC, 1995: 18:00 GMT).

Apart from EO there were a few other PMCs or Private Security Companies operating in Angola. Cleary (1999:147,148) mentions at least four other PMCs and emphasises that EO differs from them in the sense that EO was in fact a Private Military Company capable of delivering private, specialised, military forces, therefore providing services that no civilian security company was equipped or licensed to provide.

EO provided training to the Angolan Armed Forces (FAA) until September 1993 (Pech & Beresford, 1997a:24). According to Cleary (1999:156), EO was on and off involved in Angola for two periods of twelve months until September 1995 and for three more months until January 1996. During this time EO’s involvement multiplied new weapons purchases and brought about more dynamic leadership abilities within the FAA, turning the tables in the civil war (Cleary, 1999:156).

According to Hooper (2002:65), EO never had its own armoury in Angola and relied on the host government to provide all the weapons. The recapture of the diamond fields in Lunda Norte in June 1994 was regarded by many as a turning point in the war. One major effect it had was reducing UNITA's capacity to pay for its operations. (Sunday Tribune: 31/07/1994).

Barlow stated that “we are not going to help anyone that is not a legitimate government or that poses a threat to South Africa, or that is involved in activities really frowned upon by the outside world. We have had a major impact on Africa. We have brought peace to two countries almost totally destroyed by civil wars”. Claims such as these are very bold yet very necessary to provide the PMC market with the respectability and credibility it lacked in some cases. EO also claimed that its intervention in Angola forced Savimbi to the negotiating table (Venter, 1995:76 and Luittingh, 1995). Howe (1996) also backed this statement by arguing that EO’s intervention successfully contributed to conflict resolution.

3.3 Who mandated EO in Angola?

Two former British special service officers with oil interests in Africa hired Barlow and a colleague to recruit a band of mercenaries for two month’s work in north-western Angola in January 1993. The operation sounded simple – capture and defend valuable oil tanks at Kefekwena and then do the same for the oil town of Soyo which had been overrun by the troops of Jonas Savimbi’s União Nacional para a Independência Total de Angola (UNITA) (Pech, 1999:85).

According to Bunker & Marin (1999), Executive Outcomes claimed that its sole purpose was to bring stability to the (Angolan) region by supporting legitimate governments in their defence against armed rebels. A number of analysts have noted its close connections with the Branch-Heritage group, a group of British companies with interests in energy and mining. Tony Buckingham, a senior director in a number of Branch-Heritage companies, is said to have introduced Eeben Barlow to Sonangol who employed EO in its first operations in Angola. Part of the payment for these services might have been guaranteed by Ranger Oil West Africa Ltd which shares oil blocks with Heritage Oil and Gas (a member of the Branch-

Heritage group). EO's parent company was most likely the South African-based Strategic Resource Corporation (SRC). EO exists in SRC's corporate universe as just one satellite in a web of thirty-two companies involved in a plethora of mining, air charter, and "security" concerns. These satellite companies are registered anywhere from Cape Town to the Bahamas to the Isle of Man (LoBaido, 1998).

EO was contracted in January 1993 to capture and secure oilfields in Soyo and oil tanks in Kefekwena. This needed to be done to secure the interests of various oil companies who already had immense amounts of shares invested in the Soyo area. A full-scale war erupted between EO and Savimbi's UNITA. The latter was heavily deployed in the Soyo area. EO's involvement in Angola caused quite a stir. The media dubbed EO soldiers mercenaries, therefore regarding all their activities as illegal according to international law. Loopholes in the international law, such as the coining of a suitable definition for PMCs and the unwillingness from governments to comply with the international law opened the door for EO to secure lucrative "private security" deals. EO secured Soyo and therefore the employment of the private military entity was a successful strategic move on behalf of MPLA (Citizen; 24/03/1993).

It is documented in Cilliers & Mason (1999:149,150) that EO found itself on both sides of the war early in 1993. EO withdrew and soon the Soyo area was under UNITA control. (Pech & Beresford, 1997a:24). The EO was obviously successful to fend off UNITA and to prevent UNITA from seizing Soyo. Owing to the success that EO achieved in Soyo another contract was given to them by the MPLA in August 1993 (Die Burger: 05/10/1993).

EO had a contract with the government of Angola to provide protection and offer training in return for a share in the profits of the country's natural resources (Arnold, 1999:117). The contract, reportedly worth $40 million, included a supply of arms as well as training. The government mortgaged between five and seven years of oil production to purchase these weapons. The need to guarantee payment from the governments of the thirty-one countries with which it conducted business, of which several were on the verge of bankruptcy, led EO to set up a company called Branch Energy. (Sawyer, 1998)

This company was intended to run the oil installations, and the gold, copper or diamond mines of cash-strapped countries like Angola and Sierra Leone. EO was given profit-sharing rights in lieu of hard currency. It is perhaps worth noting that the Diamond Works office in England is located at 535 Kings Road in downtown London, which just happens to be the address of ... Executive Outcomes! Executive Outcomes' famous contracts in Angola and Sierra Leone were coordinated by SAS veteran Tony Buckingham and EO's Eeben Barlow.
(Sawyer, 1998)

Buckingham had been set up with a pocket oil company, Heritage Oil and Gas in Oman, a traditional British Intelligence/SAS staging point. Heritage Oil and Coastal Oil, part of Buckingham's business web, are reported to have provided loans for the government to purchase weapons whilst EO was in Angola. With the assistance and, on some occasions, direct participation of Executive Outcomes, the Angolan Government forces had a series of victories during 1994.
(Sawyer, 1998)

When the external security force is a component of a multinational corporation, the corporation potentially gains powerful leverage over a government and its affairs. In proffering security to collapsing, mineral-rich states such as Sierra Leone and Angola, multinational corporations accentuate the international exploitation and marginalisation of the states in question (Brayton, 2002). Some argue that corporate mercenary forces who support the search for strategic minerals represent neo-colonialism operating under the banner of liberal market policies (Francis, 1999:319).

Although mineral exploitation is not the motive behind all private military activity, it clearly has been the driving factor in Sierra Leone and Angola. The motivating force in every case has therefore been commercial advantage, new business and fresh profit opportunities.

According to Moore (1997) in both Angola and Sierra Leone, diamonds and De Beers were the kingpin of the game. He states that EO's armaments and

officers were the core, with the addition of some local soldiers, which moved rebel groups out of diamond areas. De Beers in London drives the 4 000 employee strong Central Selling Organisation (CSO) which maintains the global monopoly structure of the diamond business and De Beers also runs one of the most sophisticated intelligence organisations in the world, using the full gamut of tools of the trade, such as dummy front companies, covert spying capabilities and private intelligence firms (Moore, 1997).

Executive Outcomes' contracts, nominally with the respective governments and, in part underwritten by International Monetary Fund (IMF) and World Bank arrangements in the finances of the target countries, were paid off with diamond concessions to a Buckingham front company, Branch Energy. Although not formally De Beers, Branch operates within the contractual domain of the CSO, like many other so-called independent diamond operations.

Executive Outcomes' annual cost in Angola was a fraction of that of the UN's operation. In 1996/97 alone, UNAVEM III cost $135 million (Brayton, 2002). This impressive figure adds weight to those arguments that favour the regulated use of PMCs to provide stability and prevent conflict as in Rwanda and Bosnia, since PMCs are mobilised more easily and for less money. Howe (in Aning, 2000:32) agrees and states that by employing PMCs, influence is obtained at less political and economic costs. This could be true in a sense but to think that the buck stopped when EO withdrew is just premature thinking. By being affiliated to Strategic Resources Corporation (SRC), EO's involvement in Angola and other countries opened the door to other SRC affiliates to sit at the negotiation tables where others merely had to wait outside. SRC contains a diverse web of companies whose activities include anything from demining, telecommunications, media and engineering and more (Pech, 1999:87).

The contracts are still coming in for Branch Energy. Its concessions in Angola were renewed in 1997, with Teleservices (belonging to EO) awarded the security contract (Mail and Guardian:B1; 09/05/1997). The SRC infiltrated Angolese society, and EO paved the way towards the negotiation tables. The khakis, webbing and rat packs were donned and traded for suits and business dinners. The SRC was in the

ideal position to negotiate for contracts in helping to reconstruct and to aid Angola in the development phase (Saturday Star: 21/10/1995). It has, however, been reported that some EO personnel are being redeployed from Executive Outcomes into front companies such as Saracen International (SI), Shibata Security (SS) and Stuart Mills International (SMI). These companies are involved in mine clearance (SI & SS) in the Soyo area (SI), and the renovation of a military hospital (SMI). Other companies reportedly linked to Executive Outcomes include Branch Energy operating in Cabinda (The Star: 24/10/1995). It can therefore be said that thanks to EO involvement, profit is still being made.

3.4 EO's withdrawal from Angola

In November 1994 UNITA signed a peace agreement in Lusaka. This agreement included a provision for the withdrawal of foreign forces (*Lusaka Protocol Annex 3, Agenda Item II.1, Military Issues (I) II-6*). Under the Lusaka Protocol, "repatriation of all mercenaries in Angola" was demanded. According to the Human Rights Watch (1996:30-34) this became a contentious subject and the presence of EO personnel in Angola prompted UNITA to submit to the chairman of the Joint Commission a document entitled "Repatriation of all Mercenaries in Angola" in which it alleged that the Angolan government had recruited and was using mercenaries.

The government of Angola responded by issuing a statement in November 1995 which asserted that the definition of mercenary, as in the *International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted at the 45th session of the UN General Assembly in 1989*, did not apply to EO personnel. They were called "foreign military and industrial security specialists" in the Angolan Armed Forces and industrial security firms, hired on a co-operation basis. The government argued that the co-operation agreements and contracts signed with the Ministry of Defence were legal as they were in accordance with *Article 15 of Presidential Decree No. 2/93* on military policy (Human Rights Watch, 1996:30-34).

Executive Outcomes remained in Angola until December 1995 when it was withdrawn, reportedly on US insistence. General de Matos and Phillip Sibanda, the commander of UNAVEM forces, were present to monitor the repatriation of the last of the EO contingent. According to the Angolan government, 446 EO personnel were repatriated to South Africa (Hooper, 2002:228).

When the peace accords were being signed in Angola, US President Clinton threatened to cut off aid if a contract the Angolan state had given to Executive Outcomes was not handed over to an American firm. EO withdrew due to the Angolan government that succumbed under US pressure. There are speculations that the US wanted to create an opportunity for a US PMC (MPRI) to fill the gap left by EO's departure. The filling of the void by a US PMC is a very strategic move to look after the US national interest, but MPRI's alleged involvement in Angola cannot be confirmed. The only evidence of such a possible contract is that the US state department has already approved a license for the contract, and numerous visits and negotiations took place between the two countries regarding the matter. (*http://burn.ucsd.edu/archives/ats-l/1997.Jun/0040.html* /Author unknown)

3.5 Assessment

Although the numbers involved were small – Executive Outcomes never had more than 500 men in Angola, compared with Angolan and Cuban armed forces of more than 100 000 men – they are generally regarded as having played a critical part in securing victory for the government forces and the ceasefire and the Lusaka Peace Agreement. The definitions and parameters of the *Regulation of Foreign Military Assistance Act (1998)* effectively encompassed the vast majority if not all of the operating conditions in which Executive Outcomes had successfully negotiated international contracts over the previous nine years.

The *Foreign Military Assistance Act* forced EO and other PMCs to seek government authorisation for each contract. By then EO was out of Angola. The said Regulation Act also effectively made the South African government partly responsible for the actions of Executive Outcomes and any other South African based PMCs, as it legitimised their standing and conduct of international

operations. In 1998, EO's former CEO, Van den Bergh, pointed out that despite the new legislation, EO would still be able to operate in foreign countries. "The crux of the new bill [is] to regulate foreign military assistance to parties involved in armed conflict. So, as far as I'm concerned, if I'm not going to support any party involved in armed conflict then I don't need to apply for permission or authorisation … If a country like the United States wants to contract me to provide a specific service for them, why would I need to ask the government's permission? Because that is not regulated by this bill" (Pech, 1999:96, 97).

For undisclosed reasons, the Executive Outcomes Board of Directors decided to terminate all operations, (in 1999, after EO served in Sierra Leone for some time) and wind down the company rather than risk prosecution by not complying with legislation. (*www.globalsecurity.org* /Author unknown)

However, there are very strong indications that the Executive Outcomes' structure merely transferred its operations to a series of aligned companies that included Sandline International (which took over from EO in Sierra Leone in 1999) which was unfettered by such national legislation. This example highlights the fragility of regulation at national level, in that any legislation that is perceived by a PMC as too constraining, may simply force that PMC to relocate its operations to another nation that has less restricting legislation, if any at all. This aspect is a further indication that some PMCs are merely subcomponents of far larger and extensive transnational companies within the global security, mining, and resource industries.

Brayton (2002) argues that although Executive Outcomes and similar firms provide military services, and not the full range of peacekeeping provided by the UN and national forces, there is no doubt that private firms mobilise more quickly and are less sensitive to casualties. Various claims are made by journalists, commentators and EO staff that they did bring Savimbi to the negotiation table, as mentioned earlier. It is also reported that EO's presence was not negotiable, because General de Matos thought that EO was an integral part of his defence force and likely to remain so for a long time (Hooper, 2002:226).

The UN frowns on the use of mercenaries. In his 1993/4 report, the UN Special Rapporteur on the use of mercenaries concluded that for Angola, "with regard to the aggravation of this armed conflict, the presence of foreign mercenaries who have participated in training operations and in combat has been a key factor in the duration and nature of the conflict" (Ballesteros, 1994). The UN might not regard EO very highly but EO did assist the UN in the provision of information and reports, because UN information and reports were “utterly valueless” (Hooper, 2002:225). The UN did not exactly pass the test to establish sustainable peace in Angola. Six months after EO’s withdrawal, UNITA launched a major attack in the Uige province (Hooper, 2002:227). UNITA's behaviour showed that the Lusaka Protocol was not adhered to and that the UN was torn between peacekeeping, peace-enforcing and conflict-resolution duties, and that maybe EO did fill a void.

CHAPTER 4: CASE STUDY – MPRI AS A NON-COMBAT TYPE PMC IN EQUATORIAL GUINEA

4.1 Equatorial Guinea's domestic regulatory framework for mercenaries and PMCs

Given the lack of relevant international legislation, greater emphasis falls on national legislation. The American PMC MPRI served in Equatorial Guinea. Domestic laws typically fall short. According to this research no applicable national laws in Equatorial Guinea could be found. *The Neutrality Act of the US* merely prohibits the recruitment of mercenaries within the US; being a mercenary is not in itself a criminal activity. Even the restriction against recruitment is rarely enforced. The US laws cannot necessarily apply to the contractors since many of them are not US citizens according to Singer (2003).

Isenberg (1999) states that the US State Department amended the International Traffic in Arms Regulations by adding the provision that persons engaged in the business of brokering arms shall register after paying a fee. The effect is that firms such as Military Professional Resources Incorporated (MPRI) receive official approval to transfer arms overseas. Of course, MPRI does not do such things without first fully clearing it with the appropriate approval authorities, but the effect might make it easier for smaller PMCs to do so in the future.

According to Musah & Fayemi (2000), *the Convention on the Elimination of Mercenaries (OAU CEM*) in Libreville, Gabon on 3 July 1977, which entered into force on 22 April 1985, is outdated in the current era of intrastate warfare, "legitimate" private military and security companies (more often than not contracted by governments or multinationals) and resource-driven conflict. These deficiencies are compounded by the fact that despite widespread ratification, few African countries have domesticated the *OAU CEM* into national legislation. Singer (2003) states that it is unclear which laws apply to the contractors. He mentions that they do not fall under international law on mercenaries, which is defined narrowly.

The requirement that mercenaries take a direct part in hostilities would exclude those, such as US-based Military Professionals Resources Inc. (MPRI), acting as foreign military advisers and technicians (Shearer, 1998a).

4.2 MPRI's background: an American company in Africa

The MPRI advertises itself as having "the world's greatest corporate military expertise". Military Professional Resources Incorporated is a legally registered private company under Delaware state law. The company's office headquarters are located in Alexandria, Virginia. The MPRI website specifically incorporates this message within its "Organisation and Management and Business Philosophy" sections, declaring that "included among its board members and employees are over fifteen retired four-star generals, including former chiefs and vice-chiefs of military services and regional commanders-in-chief" (*http://www.mpri.com.current/* Author unknown).

According to Alvarez (2000), the MPRI is widely known for its military leadership and training focus within the US ROTC programme. In addition to conducting leadership training with the Croat Army in 1996, MPRI has also conducted military training operations with the Bosnian Croat-Muslim Federation Army, the Kosovo Liberation Army (KLA), the Army of Rwanda and the Colombian Ministry of Defence with employees currently in Macedonia, Croatia, Bosnia, Saudi Arabia, and Nigeria. MPRI was also involved with the implementation of the Clinton administration's African Crisis Response Initiative (ACRI) in Senegal. The Clinton administration's ACRI represented a deliberate government initiative to train African soldiers for peace operations within the African continent. The ACRI has been described as enabling an African solution for an African problem. Peters (1999) feels that it represents a deliberate measure designed to avoid commitment of US armed forces to the enduring security problems within the African continent.

According to Horton (2004) there are PMCs working with Equatorial Guinea's government. It is one of the countries to have State Department-approved US private military companies train and reorganise its military. In fact, these private contractors successfully pressured the US government to lift a ban on American

companies that provide assistance to Equatorial Guinea. The ban had been imposed because of Equatorial Guinea's appalling human rights record.

MPRI operates the intelligence and communications systems at the US Northern Command in Colorado, which is responsible for coordinating a response to any attack on the United States. As MPRI is licensed by the US State Department, it is contracting with foreign governments, training soldiers and reorganising militaries in Nigeria, Bulgaria, Taiwan, and Equatorial Guinea (Yeoman, 2003).

In Africa, according to Wayne (2002), MPRI has conducted training programmes on security issues for about 120 African leaders and more than 5 500 African troops. MPRI seems to have quite an array of ventures and assistance programmes in Africa according to their official website.
(*http://www.mpri.com/site/int_africa.html* /Author unknown)

Such programmes include:

- **The Africa Centre for Strategic Studies (ACSS)**

  The ACSS' primary focus is to bring together senior African military and civilian leaders to study and share ideas on a full range of strategic topics. These efforts are intended to forge partnerships among African leaders to enhance their ability to deal with the challenges confronting their nations. ACSS also serves as an important asset for promoting close ties between the United States and many African countries. Among its assigned tasks, MPRI provides support, participates in strategic planning in support of the centre, assists in curriculum development, supports faculty recruitment, and provides support to the symposiums and other ACSS events.

- **African Contingency Operations and Assistance (ACOTA) programme**

  The ACOTA programme is a US State Department coordinated inter-agency programme that works with African states and other allies to develop and enhance peace-support operations and humanitarian assistance capabilities

among selected African armies. The MPRI team of multilingual regional and functional experts provides various levels of training, often in coordination with US military forces. To date, the team has conducted training in Benin, Ethiopia, Ghana, Kenya, Mali, Malawi, Nigeria, Rwanda, and Senegal. The ACOTA programme directly addresses a principal US policy objective in Africa, namely to increase African capacities to fight terrorism and to prevent, mitigate and resolve crises, conflicts and regional instability.

- **Civil-military transition assistance in Nigeria**

  MPRI has provided cross-functional teams of experts to Nigeria to assist the Ministry of Defence, the National Assembly, and the armed forces in developing and implementing a jointly developed action plan for the national defence structure, with the goals of re-professionalising the armed forces, developing competence among civil leaders in defence, disengaging the military from civil government functions, and improving the standing of the armed forces among the people. In addition, MPRI provided leader development seminars for senior and mid-grade civilian and military leaders, budget transparency assistance to the government of Nigeria in accordance with international standards, and assistance to the Ministry of Defence and the National Assembly in working together on defence matters. MPRI hosted delegations of Nigerian Defence and legislative leaders for exchange visits with US counterparts. MPRI also established a cutting-edge Joint Simulations centre and assisted in the operation of the centre that is focused on peace support operations and security operations with the Nigerian government.

- **National Security Enhancement Plan (NSEP) for Equatorial Guinea**

  MPRI developed an integrated team of defence, security, and coast guard experts to provide a detailed set of recommendations to the government of Equatorial Guinea concerning its defence, littoral, and related environmental management requirements, and also a detailed implementation processes. The implementation date of the NSEP was early 2006.

- **South Africa**

  MPRI, working in close coordination with the Republic of South Africa's Department of Defence and with the support of the US government, provided a range of training, education and policy analysis programmes to the RSA over a two-year period. Areas of concentration included strategic and contingency planning, leader development, instructor training, departmental management and processes, development of civilian defence personnel, and distance learning. (*http://www.mpri.com/site/int_africa.html* /Author unknown)

4.3 Who mandated MPRI in Equatorial Guinea?

In 1998, MPRI sought the US government's approval to enter Equatorial Guinea and shape a plan to train and equip a national coast guard force. The contract was initially rejected by two State Department desks, delaying it for two years over concerns of the Equatorial Guinea government's record of human rights abuses. "It was approved only after MPRI lobbied the department's Africa desk, arguing that if it was not allowed to do the job, someone else would" (Brown, 2000:3-5). That "someone else" might not have been a US registered PMC, but a competitor PMC registered elsewhere and therefore US interests would not be looked after. MPRI secured these interests by advising President Obiang of Equatorial Guinea on building a coast guard to protect the oil-rich waters being explored by Exxon Mobil off the coast (Wayne, 2002).

Why the interest in Equatorial Guinea? According to Horton (2004) that question can be answered in one word – oil. Smoltczyk (2006) mentions that Equatorial Guinea now has the highest per capita income, adjusted for purchasing power, in Africa. No other economy in the world has experienced 30 % average annual growth in the last five years. The country has fewer inhabitants than the German city of Düsseldorf, but each year it collects several hundred million dollars in revenues from oil companies. "Unfortunately," writes the International Monetary Fund (IMF) in its country report, "this wealth has not even led to a measurable improvement in living conditions" (Smoltczyk, 2006).

The US is searching for an alternative to Middle East oil. Horton (2004) believes that the US has now switched attention to the Atlantic waters of the Gulf of Guinea states – Nigeria, Equatorial Guinea, Chad, Cameroon, Gabon, the Republic of Congo (which is not to be confused with its much bigger neighbour, the Democratic Republic of Congo), Angola and Sao Tome and Principe. The Americans hope that oil from the Gulf of Guinea will make them less dependent on the Persian Gulf (Smoltczyk, 2006).

The US already imports 15 % of its annual oil requirements from the Gulf of Guinea and this figure is predicted to exceed 25 % by 2015. The African Oil Policy Initiative Group, a lobbying group comprising oil executives and Pentagon officials, reported to the US Congress that the Gulf of Guinea and its vast oil supplies made it a “vital interest in US national security calculations” (Astill, 2003). It suggested establishing a US military sub-command for the Gulf of Guinea and setting up bases on the islands of Sao Tome and Principe. “Unless the US did more to prop up the oil industry there”, commented one senior Central Intelligence Agency (CIA) official, “the oil industry ran the risk of imploding as a result of the region’s inherent instability” (Guardian Weekly, 10/7/03).

According to Robert Murphy of the US State Department's Bureau of Intelligence (Smoltczyk, 2006), "Much of the oil in West Africa is offshore, which separates it from domestic political or social unrest." Therefore the oil can be shipped directly to the United States, without going through high risk areas.

4.4 MPRI’s role (as non-combat type PMC) in Equatorial Guinea

MPRI first applied for a license from the US State Department, as required by US legislation, to work in Equatorial Guinea in 1998. But the department's Bureau of African Affairs rejected the request because of Equatorial Guinea's history of human rights violations. MPRI appealed that decision to the assistant secretary of state for African affairs, then Susan Rice. "I pointed out to her that no one knows what's going on in the country, and the US ambassador has supported our application," Soyster, an MPRI spokesman, said (Dare, 2002).

According to Dare (2002), MPRI cleared the Africa bureau's concerns, only to hit another roadblock at the department's Bureau of Democracy, Human Rights and Labour. Again, MPRI lobbied, this time in the US Congress, and a contract to assess Equatorial Guinea's defence needs was approved. Between 2001 and 2002, MPRI made several trips to Malabo to meet government officials and oil company executives. Bill Watson, vice president of Hess Triton in Equatorial Guinea, was one of those who met with MPRI, characterising it as a "courtesy" visit. Also participating in some of the meetings was Staples, the US ambassador to Cameroon, according to a military attaché who was present at the meetings (Dare, 2002).

MPRI submitted a proposal to revamp the armed and police forces of Equatorial Guinea, but was granted a license by the State Department in May 2002 to train only the Coast Guard. US Senator Russell Feingold, a leading proponent of human rights in Africa, has been at the forefront of opposition to MPRI getting a contract for comprehensive military training in Equatorial Guinea for fear that US-trained forces will be used against government opponents.
(*http://www.mountainrunner.us/files/warbusiness.doc* /Author unknown)

Goddard (2001) concurs that MPRI has exploited the wide parameters of *subparagraph 2(b) of the 1977 Additional Protocol to the Geneva Conventions of 1949* that enables foreign advisors and military technicians to be excluded from the definition of a mercenary. “Although the end state from some of the international contracts conducted by MPRI personnel may be the integral equipping and training of a foreign nation state's personnel for direct combat operations, the individual status of MPRI contracted personnel is not compromised in accordance with the Additional Protocol” (Goddard, 2001). According to the MPRI website, the company has the resources and expertise to (legally) conduct training programmes, force development actions, equip armies in transition, and to conduct doctrine and leadership training "short of combat operations" (*http://www.mpri.com.current* /Author unknown).

4.5 Assessment

Yeoman (2003) mentions that MPRI are staffed with retired military officers who are well connected at the Pentagon – putting them in a prime position to influence US government policy and obtain more business for their firms. They operate with little oversight, and use contractors that also enable the military to skirt troop limits imposed by US Congress and to carry out clandestine operations without committing US troops or attracting public attention. ”Private military corporations become a way to distance themselves and create what we used to call plausible deniability” says Daniel Nelson, a former professor of civil-military relations at the Defence Department's Marshall European Centre for Security Studies. ”It's disastrous for democracy.”

The US government has an overt relationship with US PMCs of which MPRI is but one of many. The MPRI website specifically states that "each of MPRI's current international contracts is directly with a foreign government and that none are controlled by the US government. However, each has in place a license from the US Department of State." (MPRI Activities Brief, Homepage of MPRI. Available from *http://www.mpri.com.current* /Author unknown)

Therefore MPRI's international contracts must operate with the consent of the US government. According to Brown (2000:3-5), it is exactly this linkage to government that has led some academic quarters to assert that PMCs have "quietly taken a central role in the exporting of security, strategy and training of foreign militaries – it's a tool for foreign policy in a less public way." De la Garza (2001:4) notes that an MPRI spokesman, retired Army Lieutenant General Ed Soyster acknowledged this fact. With reference to the Clinton administration's "Plan Columbia", Soyster agreed that "they were using us to carry out American foreign policy. We certainly don't determine foreign policy, but we can be part of the US government executing its foreign policy."

Another point of view is that PMCs’ development has enabled governments to commit to foreign crises while avoiding the publicly sensitive issue of potentially sustaining troop casualties on missions other than fighting wars. According to

Adams (1999:103-116), "for the risk-averse, like the US military, employing such private contractors can help to overcome the political reluctance to become involved in situations where risks are high and there is little domestic constituency for involvement of US troops."

CHAPTER 5: CONCLUSION

5.1 Comparing EO with MPRI

EO is seen as a combat type PMC and MPRI as a non-combat type PMC but the imperceptible line between "military advisors" and combatants is often crossed. MPRI personnel are alleged to have helped in planning the Croat occupation of Krajina and ethnic cleansing of the Serbs in 1995 (Silverstein, 2000). EO's involvement in combat, however, is well documented (in Angola and Sierra Leone). The distinction between combat and non-combat operations is often artificial. The people who fly soldiers and equipment to the battlefield are as much a part of the military operation as those who do the shooting. At one remove the same applies to those who help with maintenance, training, intelligence, planning and organisation – each of these can make a vital contribution to war fighting capability. Other tasks such as demining or guarding installations may be more or less distant from active military operations according to the broader strategic picture (Straw, 2002).

5.1.1 Similarities between combat type and Non-combat type PMCs

EO as a combat type (now defunct) and MPRI as a non-combat type claimed to be PMCs and not mercenaries. Both these companies rendered their services in Africa and both the abovementioned companies have also provided their clients with training, intelligence gathering, support, surveillance, countersurveillance, interrogation and counterinterrogation skills. According to Pech (1999:100), they even provided training of dog and horse units. The latter became very popular especially with the rise of organised criminal activity in South Africa that is linked to global syndicates. EO and MPRI tendered for a dog unit contract in Saudi Arabia in 1997 (Pech, 1999:100). Both companies' personnel consist of former military personnel with many years of active duty experience.

5.1.2 Differences between EO and MPRI

According to Cullen (2000:38), the South African government largely tolerated the emergence of Executive Outcomes as an almost wholesale privatisation of certain apartheid-era elite battalions. This tolerance was demonstrated mainly because EO offered a convenient way to employ potentially dangerous elements within the state during the fragile transitional period to democracy, rather than out of a calculated foreign policy. Cullen (2000:38) states that the kind of trust implicit in the relationship of the United States with MPRI was lacking between EO and South Africa, and that helps to explain why EO decided to end operations a few months before the new South African legislation regulating PMC activity was to take effect. Without strong PMC and home government links, one cannot assume any real degree of home state accountability of PMC activity by means of informal oversight.

MPRI, according to Cilliers & Douglas (1999:113-114), considered direct participation in military combat similar to the arrangements made between the government of Sierra Leone and Executive Outcomes, and the contract signed by the government of Papua New Guinea and Sandline. Cilliers & Douglas (1999:114) state that the official MPRI response regarding involvement in military combat operations is: “If you want Executive Outcomes you don’t want MPRI.”

Cilliers & Douglas (1999:111) concur that MPRI is encouraged to undertake profit-making military ventures that are aligned with the national security interests of the US, but does so overtly. EO, however, worked largely independent of South African government regulation (Isenberg, 2000). The difference between the man who pulls the trigger and the operational staff member who decides where to attack, when and with what, or the trainer who moulds units into effective operational units, remains debatable (Cilliers & Douglas, 1999:114).

5.2 Is regulation sufficient?

After examining all the relevant laws regarding the topic, this research paper concludes that states’ ability to control PMCs on international as well as national

level is at best limited or almost impossible. The reason is mainly owing to the circumstances and conditions under which PMCs operate. Weak states (Reno, 2000) are their employers, hence the lack of proper judicial systems and monitoring which makes monitoring, transparency and accountability almost impossible.

Many PMCs are anxious to see the development of rational regulatory frameworks and are willing to submit to the monitoring of their activities. The development of benchmarks for good (and ethical) business practice opens the doors for the legitimisation of firms and thus more contract opportunities, but also for the civil oversight of the industry (McIntyre, 2004:103). Prospects could look less gloomy if PMCs are regulated by countries through their own domestic legislation. In quite a few instances laws need to be drafted on domestic levels to deal with the PMC phenomenon successfully. The most active efforts in controlling PMCs are occurring on a national basis (Isenberg, 2000). National legislation, however, is not a long-term solution (The Economist, 16-22/01/1999).

Insufficient measures by countries and the UN, as an international organisation, to actively combat mercenarism and regulate PMCs, show that mercenarism and PMCs are not a very high priority within the UN. Brooks & Solomon (2000) state that the *UN International Convention against the Recruitment, Use, Financing and Training of Mercenaries 1989* has added even more confusion to the matter, and it is impossible to prove all the requirements stipulated in the treaty that must be met. The UN treaty also ignores certain requirements and therefore creates even more loopholes to exploit within the international law. The treaty does not deal with private military armies, only individuals and also not individuals who regard religion as the main motivator.

According to Cullen (2000, 37), at a political level this can be explained by the fact that the international community simply does not want tough legislation on this issue, with both strong and weak states often preferring to keep this private military option open for future availability. This is illustrated by the fact that many of the signatories of the OAU/AU convention have, since signing, actually hired mercenaries themselves (Cullen, 2000:37).

The recent “rent-a-coup” episode in Africa that involved the British Logo Logistics firm, illustrates the problem of teasing out exactly what is the right or moral thing to do in the absence of international or national guidance or rules regarding PMCs (Singer, 2004a:9). The firm has been accused of fronting for outside interests (wealthy businessmen and an exiled leader) in the profit-motivated toppling of Equatorial Guinea’s government (Padera, 2004). Equatorial Guinea’s president took power by killing his uncle, and was a wholly ruthless human rights abuser of the worst sort. This might have been “legitimate” under archaic international standards (Singer, 2004a:9).

5.2.1 What are the weaknesses of the regulation of PMCs?

McIntyre (2004:102) warns against strict regulations against PMCs, given the growth of the private military sector and its current embeddedness in Africa. She believes that this could have the adverse results of reducing state transparency regarding the defence sector and driving private actors underground (McIntyre, 2004:102). The risk of the emergence of mercenary groups in this scenario would increase. O’Brien (2000) agrees that “in South Africa, the larger players were known and contributed to a degree of self-regulation of the industry; the heavy-handed approach of the South African government towards confronting these companies now means that the larger players may now leave the country to base themselves elsewhere or break-off into much more covert companies which the government will not be able to keep track of with anywhere near the same ease which they had the larger companies previously.” This, however, is not a PMC weakness but a weakness of the tough regulations of PMCs, because PMCs will simply close and open up shop elsewhere that is less regulated or where no regulations might exist.

“Private military firms and their employees are integral, inherent parts of military operation. But, at the end of the day, they are not part of military. This means that the old legal codes, which seek to create a sharp delineation between civilians and soldiers, are not readily useful” (Singer, 2004a:9-10). The monitoring of PMC activities are very difficult because of the environments they operate in. Singer (2004b:541) believes that the very form of the PMF gives it the ability to defeat

almost any attempts at strict legal controls at this level, and that problems arising from the extraterritorial nature of their operations and the overall weakness of state ordinances also mitigate any efforts at establishing and regulating the legal status of firms at domestic level.

The lack of political will to create effective legislation regarding PMCs and their activities is also a big concern. To give the domestic legislation more teeth, Singer (2004b:548) proposes that the *Military Extraterritorial Jurisdiction Act* (of the US) be expanded to include the activities of any American PMFs and/or American PMF employees working abroad, regardless of who their clients are. Enforcement of this expansion is, however, problematic, but could be better suited to deal with the industry's regulatory challenges.

One major weakness of the regulation of PMCs is that international law does not define the status of contractors (they do not fit the international mercenary definition) and, other than the untested International Criminal Court, it lacks the actual means to enforce itself without the state (Singer, 2004a:12-13). "There is far less accountability to the American public and to international law than if real troops were performing the tasks. Crewdson (2003:C3) mentions that in at least two past DynCorp (a US PMC) operations, employees were accused of "engaging in perverse, illegal and inhumane behaviour, purchasing of illegal weapons, women and forging passports along with committing other immoral acts". One of the employees taped himself while raping two young women, and even with the irrefutable evidence against these employees none of them was criminally prosecuted, mainly because of the absence of law enforcement, according to Singer (2004b:525). Had these men been soldiers, they would have faced court-martial proceedings. As private workers, they were simply put on the next plane back to America" (Yeoman, 2004).

The notorious Bob Denard received a five-year suspended sentence from a French court in 1993. Denard took part in a failed coup in Benin, in which seven people died (Burns, 1995). This example shows the ineffectiveness of the laws regarding PMCs and the ineffective enforcement of the laws. None of these cases or similar crimes regarding mercenaries or PMCs and/or their employees appeared in the

International Criminal Court in The Hague. These exploited gaps in the legal system regarding PMCs and their regulation need to be filled to avoid future atrocities.

Cilliers & Cornwell (1999:238) believe that conventions such as *the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries of 1989* will remain toothless and useless, unless the international community can come up with clear legal responses to what constitutes illegal private military involvement, as opposed to mercenary activity. Currently Africa is providing a lucrative marketplace for PMC activities. The continent's underdeveloped character can easily be exploited owing to the absence of monitoring border movements and the lack of proper negotiation instruments. According to Cilliers & Cornwell (1999:240) extradition agreements are absent in many cases and they believe that the principle followed in cases of international crimes of extradition or prosecution should be applied to deal with atrocities committed by private security and military companies.

Normally, an individual's crimes fall under the local nation's laws. The South African government confirmed this through saying that its nationals arrested in Zimbabwe and Equatorial Guinea regarding the "rent-a-coup" plot, will have to stand trial and serve any prison sentences in these countries. "We have no prisoner transfer agreement with any country," said foreign ministry spokesman Ronnie Mamoepa. "As with all South Africans arrested in foreign countries, they will have to face the laws of those countries should it turn out that they were mercenaries. We do however, offer consular services. But bringing them back would be out of the question" (Padera, 2004). According to Singer (2004a:13), PMCs typically operate in failed state zones; indeed, the absence of a local state is usually why they are there. These areas where PMCs usually operate, mostly do not have sufficient regulations regarding PMCs and therefore regulation is not adequate. Examples include: Angola, Sierra Leone and Equatorial Guinea.

The OAU/AU Convention for the Elimination of Mercenarism in Africa (CEMA) definition of mercenaries presents according to Aning *et al* (2004:2) a number of grey areas relating to state engagement of the services of mercenaries such as

PMCs that provide guarding of VIPs, sensitive installations and training of the military of a regime in need of their services, which do not fall under Article 1(b) of the CEMA (Aning *et al*, 2004:8,9). Zarate (1998:129) states that the drafters constructed the convention to allow African governments to continue to hire non-nationals as long as they were employed to defend themselves from "dissident groups within their own borders," whilst disallowing their use against any other AU supported rebel groups.

The FMAA had no mechanism to effectively determine the existence of armed conflict, failed to define mercenaries or their activities and excluded "humanitarian assistance" from its regulations (Webb, 2006:6). These above-mentioned three areas were considered as major weaknesses, were and could be exploited by mercenaries and PMCs, therefore making prosecution a tough act to follow. Critics of the FMAA point out that it offers no distinction between legitimate private military activity and mercenarism. One result of this might be that potential recruits to the industry prefer to circumvent the requirement of seeking permission from the National Conventional Arms Control Committee rather than running the risk of becoming enmeshed in a process that appears to lack clarity, and for some, is felt to penalise a sector of the population, namely former South African Defence Force (SADF) soldiers demobilised during the post-Apartheid transformation, whose military backgrounds and skills are in demand elsewhere, if not in their home country (McIntyre, 2004:103).

According to Smith (2005:24), South Africa passed its *Foreign Military Assistance Act* under which it tried to prosecute the Equatorial Guinea coup plotters and ended up with a plea bargain deal with Mark Thatcher. In Zimbabwe, owing to the lack of domestic legislation that deals with mercenarism, the 70 men were charged with the violation of Zimbabwe's *Public Order and Security Act, the Firearms Act* and the *Immigration Act* (Aning *et al*, 2004:64). Other African countries also lacked the capacity in the past to prevent the recruitment and transit of men and weapons through their territory, and so failed to meet the commitments pledged to the APRM.

The mercenaries that flowed from South Africa through Ghana into the Ivory Coast are a perfect example of such failures and flaws in the system (Aning *et al* , 2004:65).Although the regional and state collaboration and co-operation regarding elimination of mercenary activities are important, the Equatorial Guinea saga once again showed that African countries are not geared to deal with this phenomenon of mercenarism sufficiently and that they lack the legal capacity to expose serious flaws in the legal frameworks.

Smith (2005:24) believes that PMCs are currently in a legal no-man's-land. He believes that they are "illegal internationally and have no rights or obligations, and they are outside the Geneva Conventions or the International Criminal Court (ICC)." Arnold (1999:126) states that "the mercenaries if properly controlled and regulated, answer a vital market need and one that is likely to grow in the future". It is therefore up to states to be involved in the formative years of the puppy, to assist in the training and nurturing process, otherwise the puppy would grow up rogue and become an untrainable dog … wetting carpets and becoming a future embarrassment … if it is not already too late.

South Africa is, however, once again taking a step towards better regulation by drafting the *Prohibition of Mercenary Activities and Prohibition and Regulation of certain Activities in Areas of Armed Conflict Bill*. This bill is not focused on for the purpose of this study, but its relevance is acknowledged. The government proposed that the existing *Foreign Military Assistance Act of 1998 (FMAA)* needs to be repealed and replaced with the new act (Webb, 2006:6).

A shortfall of *The Prohibition of Mercenary Activities and Prohibition and Regulation of certain Activities in Areas of Armed Conflict Bill* is that although legislation could be used to authorise and refuse permission to do legitimate work abroad owing to political or ideological considerations, there are no clear guidelines (Le Roux, 2006:5). According to Nathan as quoted by Le Roux (2006:5), it is "entirely unclear" why the drafters of the bill had seen fit to criminalise the rendering of humanitarian assistance without authorisation. Nathan feels that "it would not prevent any obvious mischief, and it is likely to cause considerable harm to humanitarian

organisations, their staff and South Africa's international reputation". (Le Roux, 2006:5)

Critics feel that the bill is a "shotgun approach" to the problem, and warned against the economic implications as well as the criminalisation of locals and foreigners who work in conflict areas no matter how noble their cause (Webb, 2006:6). Brooks (2006:5) concurs that "many international efforts will be at risk … (some) will have to close their operations if they can't rely on South Africans, also that there is a concern that the anti-mercenary bill was counterproductive and ran contrary to democratic ideals."

5.2.2 What is adequate about the regulation of PMCs?

Legislation regarding PMCs is speckled with loopholes and grey areas. Legislators are therefore challenged to draft laws that will curb irregular and unlawful practices in the PMC industry. Creating a platform for conversation between PMCs, governments and international organisations is of utmost importance. According to O'Brien (2000) "it is felt that the 'anti-mercenary' legislation passed in South Africa did not seek to ban EO's activities but merely bring them under government control" and that it is also "laudable as a starting point" but still problematic. O'Brien (2000) believes that current UK guidelines on arms control and the EU Code of Conduct on the arms trade provide a good starting point for examining potential ways forward to regulate the PMC industry.

Another comprehensive response to conflict in Africa is the *Protocol relating to the Establishment of the Peace and Security Council* adopted in Durban by the AU in 2002. Heads of state have committed themselves to four areas, namely early warning, using of force, combating of mercenarism, peacekeeping and preventing conflict (Aning *et al*, 2004:3). The latter also states that amongst other standards the range of legislative measures that have been put in place to translate the 1977 Convention on Mercenarism should be incorporated into national law and that there should also be a level of inter-state and inter-agency collaboration to fight mercenarism.

Various sub-structures of the SADC countries on politics, defence and security co-operation institutionalise general arrangements of the sharing of intelligence regarding mercenaries, but generally on a bilateral basis. Aning *et al* (2004:10) state that African states' levels of compliance to combat mercenarism are sometimes tenuous and that there is a desperate need to respond to mercenary activities. The recent arrest of mercenaries in Zimbabwe could lead the charge. It is crucial that states grant each other support regarding mercenary activities if they want to tackle the problem successfully.

The African Peer Review Mechanism (APRM) reviewed pledges by eight states to

- prevent entry into or passage through their territory of any mercenary or any equipment destined for mercenary use, and
- offer state capacity and willingness to take all the necessary legislative and other measures to ensure the immediate entry into force of this convention.

(Aning *et al*, 2004:59)

Indicators identified to operationalise these commitments included

- the level of inter-state and inter-agency collaboration to fight mercenarism, and
- the extent of legislative measures that have been put in place in the individual countries to translate the CEMA into national legislation.

Aning *et al* (2004:59) mention that although the above-mentioned are necessary, the states that did accede to the APRM are in their words "exemplary ones, their legislative and judicial capacities are at best weak."

Although the legislative and judicial capacities are under severe criticism, an interview with an official of the South African High Commission in January 2004 brought to light that states have informal networks of collaboration and coordination in the area of information-sharing among the operators and heads of intelligence networks (Aning *et al*, 2004:64). The effectiveness of information-sharing between African states and the commitment to crush mercenary activities in Africa were clearly demonstrated in 2004 when an alleged coup plot in Equatorial Guinea was

uncovered. Arrests were made in Equatorial Guinea, Zimbabwe and South Africa. Officials in Equatorial Guinea and Zimbabwe later stated that they had been monitoring the plot in collaboration with South African investigators.

The Prohibition of Mercenary Activities and Prohibition and Regulation of certain Activities in Areas of Armed Conflict Bill of 2006, according to Webb (2006:6), aims to define job descriptions and theatres of conflict and to enforce punitive measures that could see offenders sentenced to life in prison. The Bill will permit "military assistance" in liberation struggles, but will demonise South African involvement in conflicts not sanctioned by the state (Webb, 2006:6). The new bill might just prove to be adequate or maybe not, but only time will tell.

5.2.3 What needs to be done about the regulation of PMCs?

Breytenbach (2002b:8) feels that the UN must step up to the plate and lead the way in formulating guidelines for the universal regulation of PMCs and for regional organisations to follow. *The General Assembly's 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries* was ratified in 2001, but led to no effective action. Ratification without action is highly questionable, and therefore maybe to be more effective jurisdiction and the legality of mercenaries fall under regulations made by individual state governments (Blain, 2005:4). Apart from enforcing the UN convention as soon as possible, countries in dire need for effective national regulation can take useful pointers from the *Foreign Military Assistance Act of the Republic of South Africa of 1998* and the Ottawa Treaty that ban the use of anti-personnel landmines (Breytenbach, 2002b:8).

According to Smith (2005:24), for now South Africa's anti-mercenary laws imply a legitimisation of PMCs and PSCs. Smith (2005) believes that such companies are obliged to apply to parliament's arms control committee for permission to work overseas in war zones such as Congo, Cote d'Ivoire and Iraq. Once such companies are legally permitted to operate in war zones – even on the side of recognised governments – that gives them ethical legitimacy. Singer (2004b:548) proposes that South African legislation that deals with military assistance could be amended, by focusing the definition of its scope on the nature of assistance, i.e.

whether the service is military in content or not, rather than the destination of the service (the combat zone). In doing this, loopholes will be closed in national legislation and therefore national legislation will become more effective.

Irish (1999) proposes five conditions for either prohibiting or regulating PMCs:

- Explore the objectives that drive the legal effort at prohibition or regulation of PMCs. For the laws to be adhered to and respected they need to be appropriate and clear. The main objective, namely public protection and transparency, without being bias to any one state segment of the industry or firm must be made clear to add to fairness.
- Define who and what should fall under the definition, therefore who and what must be regulated. Only the combat types, or also those PMCs that provide training and advice? This could be done by exploring the type of service offered and to see if and how it affects the outcome of the conflict, to let the PMC involved fall under the laws of war.
- Establish specific activities that need to be prohibited or regulated. Human rights abuses and other criminal behaviour in the field by the PMCs' employees justify external legal instruction.
- Determine what body would conduct the actual observation, regulation and where necessary enforcement. Some academics plead for the UN or the Red Cross to put their hands up in this regard. According to Irish (1999) PMCs prefer a self-regulatory model as opposed to outside regulation, believing that the market will punish and reward firms based on their performance or behaviour. Self-regulation is, however, not a very strong mechanism and could be undermined.
- Look towards a system financed by interested state parties, and obligatory tariffs placed on PMCs that receive the sanction provided by the regulatory system.

Avant (2000:3) makes the following recommendations to regulate (US) PMCs from turning "rogue". "Policymakers should investigate the cost savings afforded by outsourcing, and their evaluation of the overall costs and benefits should consider the long-term political and foreign policy implications of privatisation. Stronger US

regulation of military exports is needed, including a more transparent licensing process, US government oversight of contracts, and PMC reporting requirements".

Singer (2004a:17-23) recommends that the governments, NGOs and international organisations employing PMCs must decide on the main function that they want to fulfil, namely either that of regulator or client. To aid in this decision, regulation needs to be drawn up. This could avoid embarrassment due to being both regulator and client. Such an example is when the United Nations issued a report critical of Executive Outcomes at the same time that it employed Lifeguard Security, a company often linked to EO (Electronic Mail & Guardian, 17/07/1998).

Doswald-Beck (1999) believes that multinational or other industries that use such companies ought to be accountable in some way for their behaviour; yet these clients are neither states nor parties to an internal armed conflict in any traditional sense of the word. The security companies concerned are in principle bound by the law of the state in which they function; in reality this will not have much effect if they actually engage in hostilities. Howe (2000) and Breytenbach (2002b:8) agree with Doswald-Beck's statement that if they (PMCs) are accountable to home state laws and regulations, then PMCs are no different from any other company doing business in foreign countries.

Regarding regulation of the PMC industry, Singer (2004a:17-21) believes that the following areas must be explored:

- Transparency on the accounting-side (open the business to auditing).
- Standards on outsourcing and privatisation (privatisation can be greatly beneficial, up to the point where it begins to move into core functions. Privatise something if it will save money or raise quality).
- Oversight capacity (put tasks up for competition on the open market therefore making the clients careful stewards, providing oversight and management, and let them guard their own interests. In doing this the firm is motivated through the terms of the contract and the fear of losing it, i.e. being fired and losing future business).

- Legal accountability (extend legal clarity to the questions of who can work for the firms, who the firms can work for, and what bodies and codes will investigate, prosecute, and punish any wrongdoing and in which domains. As a transnational industry, there is the need for international involvement, with proposals ranging from an updating of the international anti-mercenary laws to creating a UN body that sanctions and regulates PMCs. This means that each state that has any involvement with the industry, either as client or home base, has an imperative need to develop and amend its laws that are relevant to PMCs. Ideally, states will coordinate their efforts and attempts to involve regional bodies to maximise coverage and pave the way to international standards).

Moreover, the legal gap extends to the individual conduct level, not just corporate behaviour. The best industry of self-regulation lacks any sanction beyond market punishment, which is clearly insufficient for actual crimes, including felony offences like rape or torture in a prison (Singer, 2004a:22).

Both the US government (also other governments) and PMCs need to work toward international regulations that require transparency and accountability and to promote the rule of law and respect for human rights (Avant, 2000:3).

Smith (2002:112) also provides some possible solutions:

- The use of the existing provisions of the Geneva Convention that require belligerent parties to uphold the provisions of the convention and provide for mechanisms such as the International Red Cross to monitor conflicts for adherence to international law.
- The termination of contract(s) or facing prosecution under applicable national or international law if the PMC does not abide by international laws regarding the treatment of individuals.
- The day-to-day supervision of PMC activities by an on-site contracting officer with powers to withhold payment or terminate the contract if the PMC does not act in accordance with government wishes.

- The deployment of an integrated military-diplomatic plans and operations team with the PMC and the provision of overall guidance by a government.
- The invitation of UN observers to monitor the actions of PMCs in order to provide better transparency.
- Stricter enforcement of the US neutrality laws that prohibit an American citizen from being hired in the United States to participate in armed conflict with a party at peace with America.

Harris & Moller (2004:35) believe that countries should be non-offensive in their defence and rather contribute to a joint task force which would possess the whole range of military capacity, with no country that has a complete offensive force of its own. Brooks & Solomon (2000:34) echo this sentiment in "the answer to peace in Africa would be the creation of a Western Pan-African military force". This could be a possible solution, but regulations and laws need to be drafted with all of the contributors pledging their full support.

PMCs and governments need to engage in dialogue to find a workable solution on how to incorporate PMCs in official government structures. O'Brien (2000) concurs that if governments (such as the South African government) take on the heavy-handed approach, the doors of "what could be fruitful" dialogue will close and PMCs will put up shop elsewhere and therefore operate much more covertly.

Although all these recommendations mentioned above are credible and a move in the right direction to find workable solutions, they also contain some loopholes. Not all governments in countries where PMCs are involved are completely legitimate or democratic. Some countries have and are renowned for human rights abuses. One such an example for the purpose of this study is Equatorial Guinea, where MPRI is involved. The Obiang government has vast oil resources and the dependence of the US on the commodity could put the government in an excellent bargaining position. In fact, the government could be the puppet masters and the PMC the puppet.

According to a UN Press Release on 16 November 1999, the PMCs who are involved in the specific country continues to exploit the concessions it has received

once a greater degree of security is attained. They therefore obtained a foothold to set up a number of affiliates and associates to engage in activities ranging from mining, building, transport, importing and export. By doing this they (the PMCs and their associates) are making themselves a dominating or large player in the economic structure of the country and also an important dependant. A number of commentators (Francis, 1999, and Musah & Fayemi, 2000) argue that it is wrong for governments to pay for security by mortgaging future returns from mineral exploitation. Nevertheless, if a government is faced with the choice of mortgaging some of its mineral resources or leaving them entirely in the hands of rebels, it might be legitimate for such a government to take the former course.

Other commentators (Zarate, 1998) have argued that the association of PMCs with mineral extraction has a positive side. Firstly, from the PMC's point of view, it might be one of the few ways the PMC can be sure of being paid. Secondly, an interest in mineral extraction will give a PMC a vested interest in peace and stability (Zarate, 1998). One could also argue that it gives the PMC a vested interest in conflict. Since PMCs are paid to deal with conflict situations, some feel that they have no interest in ending conflict (unlike national armies who are paid in peacetime).

The United Nations' official condemnation of mercenary activities prevents the establishment of a UN regulatory mechanism. Creehan (2002) mentions that without proper regulation by an organisation such as the United Nations, mercenaries (or PMCs) cannot be relied on to adhere to the same ethical standards as national military forces party to international agreements such as the Geneva Convention.

Adams (2002:62) feels that the UN is not very concerned about mercenary activity and brands the Rapporteur report as a mere academic exercise, backing this statement with the information of the lacklustre support of the commission and certain valuable role players and UN member states to the mandate against recruitment, use, financing and training of mercenaries. Adams (2002:62) also mentions that the only two significant signatories to the Convention are Germany and Italy and that they are not significant suppliers of mercenaries or home to large

security firms, and that Angola (mercenaries in Angola in the 1970's and employing EO), Zaire and the Congo are signatories in spite of the fact that they make use of mercenaries in their internal struggles despite of their own laws forbidding the mercenary activity. The obligations on states to be accountable and responsible for their citizens in a globalised world are increasing and the International Criminal Court could provide a solution if the US provides the necessary support. Their non-participatory attitude could cause enforcement problems on PMCs activities.

To conclude, regulation and not prohibition is needed. According to Isenberg (2000), at a minimum such regulation must be based on greater transparency. "Some transparency is already provided by media scrutiny of PMCs, especially larger PMCs, in the countries in which they are headquartered and in which they operate. But even better would be some sort of regular declaration of their activities" (Isenberg, 2000). "We have laws to govern for the worst of human behaviour; in no other domains than this (PMC industry) do we simply hope for the best in their absence" (Singer, 2004a:22).

5.3 The future of PMCs in Africa (what must PMCs do to be regarded as "peacemakers"?)

O'Brien (2000) states that PMCs (and some PSCs) currently undertake missions which are the traditional domain of peacekeeping operations; these include protection of humanitarian assistance, demining, child-soldier repatriation, paramedical clinics, and other factors. Although PMCs are fundamentally about combat, applying certain skills to the abovementioned areas might just help them to shed their sometimes tarnished "mercenary" image. PMCs can continue to provide military assistance, for example Defence Systems Limited's military assistance in a peacekeeping environment where international peacekeeping forces are not present. These companies could also provide rapid-reaction forces to intervene on behalf of the UN, OAU, OAS or ASEAN, to halt aggression or to stop genocide when Western governments are unable or unwilling to act. The question is however if they will halt aggression and stop genocide if they are not paid in oil, diamonds or hard currency? Highly likely, the current situation in Sudan – Darfur is just one example of non involvement for no pay.

McIntyre (2004:101) mentions that DynCorp Corporation and Pacific Architects and Engineers provided housing, office equipment, transport and communications equipment in support of African Union troops. Although the nature of the support was logistical and may therefore seem innocuous, it nonetheless enabled scarce military resources to be concentrated where they were most needed. O'Brien (2000) concurs that PMCs are also capable of supporting the execution of international arrest warrants, conducting hostage-rescue operations, or serving as counter-narcotics/-terrorism forces.

O'Brien (1998) believes that PMCs are not trained in the culture of peacekeeping and concurs that PMCs are fundamentally about combat, not peacekeeping but with conflict continuing and states being unwilling to participate in humanitarian interventions, PMCs might find themselves becoming very "popular" to fill the void. It is therefore important to go about regulating them in a responsible way, because they might have an important function to fulfil in the not so distant future. "For generations we have seen the private sector make money off war, the time has come to let it make a profit out of peace" (Isenberg, 2000).

Although we do not focus on *The Prohibition of Mercenary Activities and Prohibition and Regulation of certain Activities in Areas of Armed Conflict Bill of 2006* for the purpose of this study, it is relevant in mentioning that Brooks (2006:5) concurs that such legislation would undermine peacekeeping operations, from Darfur in Sudan to Haiti and Iraq, because the "costs of peace" would soar. PMCs are still a more cost effective option than the employment of the UN peacekeeping forces. Brooks (2006:5) mentions that the UN itself (see below) made use of the private sector to provide security for UN operations. The above-mentioned bill invites criticism for "hindering South Africans doing legitimate humanitarian and private security work abroad" (Le Roux, 2006:5).

Straw (2002) pointed out in the foreword of the UK Green Paper on PMCs that "A strong and reputable private military sector might have a role in enabling the UN to respond more rapidly and more effectively in crises. The cost of employing private military companies for certain functions in UN operations could be much lower than

that of national armed forces." Even Kofi Annan (1998), former secretary-general of the United Nations, said that "When we had need of skilled soldiers to separate fighters from refugees in the Rwandan refugee camps in Goma, I even considered the possibility of engaging a private firm."

In short, legislators must define these categories (PMC and PSC) and the companies under the microscope must "get off the fence" and decide where they want to be, if they want to be considered by the UN or the AU as "new peacemakers", become "legit or go bust"! De Coning (2006:11) adds that "the legal basis for the use of force by international peacekeepers is intrinsically linked to the legitimacy and credibility they derive from their UN Security Council mandates based on Chapter 7 (and 8 in the case of the AU) of the UN Charter. The status of peacekeepers as serving soldiers in the national defence forces of member states of the UN or AU, temporarily deployed as part of a multinational UN or AU peacekeeping force, provide an additional national legal framework (and recourse) within which such operations are undertaken and regulated" (De Coning, 2006:11).

For PMCs therefore to be considered as "new peacemakers" a clearer definition of what they do and what they are is not debatable, the definitions of mercenaries are archaic and cannot be used to define PMCs. According to De Coning (2006:11) the current legal framework "Geneva Conventions, International and National legal frameworks taken together provides an internationally acceptable legal context within which lethal force may be used, under certain specific circumstances, on behalf of the international community to maintain international peace and security."

After researching the legal framework that deals with PMCs it is clear that quite a few companies are borderline cases and even more are currently operating outside the current legal framework. Companies that are engaging in combat, the combat type PMC or, as De Coning (2006:11) calls them, the PMC that provides offensive security services, will currently exclude themselves from getting a nod to be contracted by international organisations (UN an AU) to aid in peacekeeping processes.

Borderline companies or those who provide logistical and “defensive security services” provide for interesting thoughts since they are regarded as “sitting on the fence”. De Coning (2006:11) believes that although they are in the middle, many UN agencies already outsource static “guard type security services to local private security companies, but in most cases these people would be unarmed”. PMFs Pacific Architects and Engineers and ICI Oregon supported ECOMOG forces in West Africa and are currently supporting both UNMIL (Liberia) and UNAMSIL (Sierra Leone) (McIntyre, 2004:101). “The idea that private military and security companies can fill this security gap still has to be tested” (De Coning, 2006:11).

A positive note is the willingness shown by quite a few PMCs to co-operate and to become legitimate. This will help them to secure more contracts and to aid with much needed transparency and regulation of the PMC industry. Healthy debates between all the parties are continuing and are welcomed. The powers to govern and legitimise these PMCs and keep them from turning rogue are vested with the states (countries) of origin or the regional entities, and international bodies or countries that contract them. All these actors in the equation together with human rights issues that need to be addressed contribute to a very complex situation. Before PMCs can be considered as the “new peacemakers”, therefore aiding or taking over the peacekeeping duties from the UN, quite a few changes need to be made to the current regulatory framework. It is up to the above-mentioned parties to keep the dog at bay or on a very tight leash, so that it does not bite the hand that feeds it, or go underground, and turn rogue.

BIBLIOGRAPHY

Adams, T.K. (1999): "The New Mercenaries and the Privatisation of Conflict." in Parameters (Summer): 103-116.

Adams, T.K. (2002): “Private Military Companies for the 21st Century”, in Small Wars and Insurgencies. Vol. 13(2), 54-67.

Alvarez, S. (2000): "MPRI: A Private Military." Start and Stripes Digital [Website] 1 November, *[http://www.stripes.com/servlet/News/ViewArticle?articleId=100033570]*, (accessed 21 October 2006)

Aning, E.K. (2000): “Africa’s security in the new millennium – State or mercenary induced stability” in Conflict Trends. June, 30-32.

Aning, E.K., Addo, P., Birikorang, E. & Sowatey. E. (2004): “African Commitments to Conflict Prevention and Peace Keeping: A review of eight NEPAD countries”, in African Human Security Initiative. Paper No. 5. August, *[http://www.africanreview.org]*, (accessed 15 September 2006).

Annan, K. (1998): Extract from Ditchley Foundation Lecture, 26 June, *[http://www.sandline.com/site/index.html]*, (accessed 16 March 2000).

Arnold, G. (1999): Mercenaries – The Scourge of the Third World. Macmillan Press Ltd. Great Britain.

Ashworth, M. & Sellers, K. (1997): “Mercenaries Chief held on Arms Charge” in The Observer, 23 March, 17.

Astill, J. (2003): “British mercenaries find a new ferocity in Ivory Coast – Shunned by the west, soldiers of fortune scent new opportunities in Africa”, in The Guardian. 22 February. Abidjan.

Author unknown, last revision 02:42, 18 June 2007 *[http://en.wikipedia.org/wiki/Uniform_Code_of_Military_Justice]*, (accessed 5 March 2006).

Author unknown. *[http://www.burn.ucsd.edu/archives/ats-1/1997.jun/0040.html.]*, (accessed 4 July 2005).

Author unknown. *[http://www.gimun.org/2006/documents/CHR_Angola_.pdf]* (accessed 28 August 2006).

Author unknown. *[http://www. globalsecurity.org]*, (accessed 13 May 2006).

Author unknown.*[http://www.ippnw.org/MGS/V7N2Selber.pdf.]*, (accessed 3 March 2005).

Author unkown.*[http://www.mountainrunner.us/files/warbusiness.doc]*, (accessed 2 November 2006).

Author unkown.*[http://www.mpri.com/site/int_africa.html]*, (accessed 2 November 2006).

Author unknown.Volume 8 number 1(A). February 1996. *[http://www.hrw.org/reports/1996/Angola.htm#N_3_#N_3_]*, (accessed 7 April 2006).

Author unknown. *[http://www.witwik.com/2003_occupation_of_Iraq]*, (accessed 12 October 2005).

Avant, D.D. (2000): “Privatizing Military Training” in Foreign Policy in Focus. Vol. 5. No. 17. June. Interhemispheric Resource Centre and Institute for Policy Studies, *[http://www.foreignpolicy-infocus.org/]*, (accessed 23 June 2006).

Ballesteros, E. (1994): "Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples

to self-determination," submitted by Mr Enrique Ballesteros, Special Rapporteur, pursuant to Commission resolution 1993/5. E/CN.4/1994/23, 12 January 1994.

Ballesteros, E. (1996): United Nations Press Release GA/SHC/3376
(5 November 1996) United Nations General Assembly Resolution 47/84, 47 U. Supp. (No.49) at 165, UN Doc. A 47/49 (1992); United Nations High Commissioner for Human Rights (Geneva, Switzerland, July 1991).

Bardal, M. & Keen, D. (1997): "Violence and Economic Agendas in Civil Wars: Some Policy Implications", in Millennium: Journal of International Studies. Vol. 23. No. 3, 795-818.

Barlow, E. (1998): Interview held by Anthony LoBaido, *[www.WorldNetDaily.com]*, (accessed 22 March 2004).

Bayart, J.F., Ellis, J. & Hibou, B. (1999): In African Issues – The Criminalisation of the State. Oxford: Indiana University Press.

Beyani, C & Lilly, D. (2001): "Regulating Private Military Companies: Options for the UK Government," International Alert, 27.

Blain, B. (2005): "The Role of Private & Mercenary Armies In International Conflict" Information Clearing House – News you won't find on CNN, 16 August, *[http://www.informationclearinghouse.info/article3396.htm]*, (accessed 25 November 2004)

Brahimi Report (2000), *[http://www.un.org/peace/reports/peace_operations/report.htm]*, (accessed 18 April 2006).

Brayton, S. (2002): "Outsourcing War: Mercenaries and the Privatisation of Peacekeeping" in Journal of International Affairs. Vol. 55(2). Spring, 303.

Bredemeier, K. (2003): "Thousands of Private Contractors Support US Forces in Persian Gulf" in Washington Post, 3 March, EO1.

Breytenbach, J. (2002a): The Buffalo Soldiers – The Story of South Africa's 32 Battalion 1975 – 1993. Galago Publishers October, Alberton, RSA.

Breytenbach, W.J. (2002b): "Rulers, Rebels and Mercantilists – Is there an easy explanation for the continent's so called Resource Wars?" in Africa Insight. Vol. 32. No. 2, Africa Institute of Southern Africa.

Brooks, D. (2006): Cape Times "Law banning security men from hotspots 'disasterous'.".24 May, 5.

Brooks, D. & Solomon, H. (2000): "Write a cheque, and end a war: Using Private Military Companies to end African Conflict", in Conflict Trends. Vol. 1,. June, *[http://www.accord.org.za/]*, (accessed 20 September 2006).

Brown, J. (2000): "The Rise of the Private Sector Military." in Christian Science Monitor 92, No. 156, 5 July, 3-5.

Bunker, R.J. & Marin, S. (1999): Executive Outcomes: Mercenary Corporation OSINT Guide, July.

Burns, C. (1995): "Bob Denard, Africa's Aging but Notorious Mercenary, Strikes Again", in Associated Press. 28 September.

Cilliers, J. (2005): Review of the book War Dog – Fighting other people's wars by Venter, AL. (2003).Casemate, Haverton, USA & Pinetown Printers, Pinetown, South Africa. in African Security Review.Vol.14(2), 120-122.

Cilliers, J. & Cornwell, R. (1999): "Chapter 11 – Africa – From the privatisation of security to the privatisation of war?" in Cilliers, J. & Mason, P. (1999). Peace, Profit or Plunder? – The Privatisation of Security in War-torn African Societies. ISS. South Africa.

Cilliers, J. & Douglas, I. (1999):"Chapter 6 - The military as business –

Military Professional Resources, Incorporated" in Cilliers, J. & Mason, P. (1999). Peace, Profit or Plunder? – The Privatisation of Security in War-torn African Societies. ISS. South Africa.

Cilliers, J. & Mason, P. (1999): Peace, Profit or Plunder? – The Privatisation of Security in War-torn African Societies. ISS. South Africa.

Citizen (1993): "7 South Africans wounded in Angola: Claim", *Citizen*, 24 March,p2.

Cleary, S. (1999): "Chapter 8: Angola – A case study of private military involvement" in Cilliers, J. & Mason, P. (1999). Peace, Profit or Plunder? – The Privatisation of Security in War-torn African Societies. ISS. South Africa.

Conachy, J. (2004): "Private Military Companies in Iraq profiting from colonialism" World Socialist Website *[http://www.wsws.org/articles/2004/May2004/pmcs_mo3.shtml]*, (accessed 23 August 2006).

Convention Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land (Hague V) (1907): 36 Stat. 2310, 1 Bevans 654, *[http://www.yale.edu/lawweb/avalon/lawofwar/hague05.htm.]*, (accessed 23 July 2006).

Creehan, S. (2002): "Soldiers of Fortune 500 – International Mercenaries in Harvard International Review, *[http://www.globalpolicy.org/security/peacekpg/reform/pmc.htm],* (accessed 25 July 2006).

Crewdson, J. (2003): "Sex Scandal Still Haunts DynCorp" in Chicago Tribune. 19 April, C3.

Cullen, P. (2000): "Keeping the NEW DOG OF WAR on a tight leash – Assessing means of accountability for Private Military Companies" in Conflict Trends.

Dare, S. (2002): “The Curious Bonds of Oil Diplomacy” Washington, 6 November, *[http://www.publicintegrity.org/bow/report.aspx?aid=151]*, (accessed 13 September 2006).

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, (1970): G.A. Res. 2625, U.N. GAOR, 25th Session. Supp. No. 28, at 121, 124, U.N. Doc. A/8028.

De Coning, C. (2006): Cape Times “Define legitimate ‘private contractors’ We must muzzle the real dogs of war” Monday 22 May, 11.

Deen, T. (1996): Janes’ Defence Weekly. 13 November 1996 as cited in Arnold, G. (1999). Mercenaries – The Scourge of the Third World. Macmillan Press Ltd. Great Britain.

De la Garza, P. (2001): "Military Aid... from the Private Sector." in St Petersburg Times, *[http://proquest.umi.com]*, (accessed 15 October 2006).

Die Burger, (1993): “ANC steun werwing vir Angola”, *Die Burger*, 5 October,bl 1 .

Doswald-Beck, L. (1999): “Implementation of International humanitarian Law in Future Wars”, 52, *[http:/www.nwc.navy.mil/press/Review/1999/winter/art2-ww99.htm]*, (accessed 22 July 2006).

Electronic Mail & Guardian, (1998): "SA mercenaries working for the UN," 17 July, *[http://www.mg.co.za/mg/news/98jul2/17jul-mercenary.html]*, (accessed 13 August 2006).

Francis, D.J. (1999): Mercenary intervention in Sierra Leone: providing national security or international exploitation?, in Third World Quarterly. 20(2) April, 319-338.

Goddard, S. Maj, RA INF, Australia, (2001): “The private Military Company: A Legitimate International Entity within Modern Conflict”, Master of Military Art and

Science. Fort Leavenworth, Kansas, *[http ://www.globalsecurity.org/]*, (accessed 14 September 2006).

Harris, G. & Moller, B. (2004): Achieving Security in Sub-Saharan Africa – Cost effective alternatives to the military. Institute for Security Studies. Pretoria. South-Africa.

Hooper, J. (2002): Bloodsong! – An account of Executive Outcomes in Angola. HarperCollins. Great Britain.

Horton, M. (2004): "The Privatisation of War" in Peace Researcher 29 June Equatorial Guinea, *[http://www.converge.org.nz/abc/pr29-96.html]*, (accessed 3 October 2006).

Howe, H. (1996): "South Africa's 9-1-1 Force", in Armed Forces Journal International. November.

Howe, H. (1997): Interview, Center for Defense information. Washington DC. 2 October, *[http://www.cdi.org/adm/1113/Howe.html]*, (accessed 12 September 2001).

Howe, H. (2000): "African Private Security" in Conflict Trends. June, 22-24.

Ortiz, C. (2007) last revised 24 June 2007.*[http://www.privatemilitary.org/definition.html]*, (accessed 29 June 2007).

Human Rights Watch, Angola: Arms Trade and Violations of the Laws of War, 1996, 30-34, *[http://www.hrw.org/reports/1996/Angola.htm#N_3_#N_3_]*, (accessed 20 July 2006).

International Convention Against the Recruitment, Use, Financing and Training of Mercenaries (1989): U.N. GAOR, 72d plen. Mtg., U.N. Doc A/Res?44/34, 4 December.

Irish, J. (1999): Policing for Profit, ISSS Monograph Series.

Isenberg, D. (1999): "Have Lawyer, Accountant, and Guns, Will Fight: The New Post-Cold War Mercenaries. Paper presented at the International Studies Association Convention. Washington, D.C., February, *[http://www.nyu.edu/globalbeat/pubs/Isenberg021999.html]*, (accessed 19 March 2006).

Isenberg, D. (2000): "Combat for sale: The New, Post-Cold War Mercenaries." USA Today. 03/01/2000. vol. 128, issue 2658.

Jackson, P. (2002): "War is Much Too Serious a Thing to be left to Military Men: Private Military Companies, Combat and Regulation", in Civil Wars. Vol.5, No. 4. Winter, 30-55. Published Frank Cass, London.

Krasner, S. (1985): Structural Conflict: The Third World Against Global Liberalism. Berkeley: University of California Press.

Kwok, J. (2006): "Armed Entrepreneurs – Private Military Companies in Iraq" Harvard International Review. Publication date: 2006-04-01. Provided by ProQuest Information and Learning, *[http://www.customhomeonline.com/industrynews.asp?sectionID=204&articleID=300528]*, (accessed 21 July 2006).

Leander, A. (2004): "African States and the Market for Force: The Destabilizing Consequences of Private Military Companies", Political Science Publication n°6/2004 University of Southern University, *[www.sam.sdu.dk/politics/publikationer/anl6.pdf]*, (accessed 15 September 2006).

Le Billon, P., Hartwell, M & Sheman, J. (2002): "Controlling Resource Flows to Civil Wars: A Review and Analysis of Current Policies and Legal Instruments International Peace Academy" Background Paper for the International Peace Academy" Economic Agendas in Civil Wars" Project Conference Policies and Practices for Regulating Resource Flows to Armed Conflicts. Rockefeller Foundation Study and Conference Center. Bellagio, Italy, 20-24 May.

Le Roux, M. (2006): Cape Times “Anti-mercenary bill again under fire as unconstitutional.” SAPA 25 May, 5.

LoBaido, A. (1998): Executive Outcomes A new kind of army for privatized global warfare, *[www.WorldNetDaily.com]*, (accessed 15 March 2004).

Luittingh, L. (1995): The Sunday Independent (Johannesburg), 27 August.bl.3.

Lusaka Protocol (1994): Annex 3, Agenda Item II.1, Military Issues (I) II-6.

Mail and Guardian (1997):”Mercenaries grabs *(sic)* gems”, Mail and Guardian, Volume 13. No.18. 9-15 May. Business Mail, B1.

Malaquias, A. (2001): “Diamonds are a guerrilla’s best friend: The impact of illicit wealth on insurgence strategy” in Third World Quarterly, Vol. 22, No. 3, 311-325.

Mandel, R. (2002): Armies Without States: The Privatization of Security. Boulder Colorado. Lynne Rienner publishers.

McIntyre, A. (2004): “Private Military firms in Africa – Rogue or Regulated” in African Security Review. Vol. 13(4).

Migdal, J.S. (1988): Strong Societies and Weak States – State Society Relations and State Capabilities in the Third World. New Jersey: Princeton University Press.

Misser, F. & Versi, A. (1997): “Soldier of Fortune: The Mercenary as Corporate Executive” in African Business. No. 227, December, 8-14.

Moore, R. (1997): “Arming for the Post-Nation State Era” in The Executive Intelligence Review, 22 August.

MPRI Corporate Brief, Homepage of MPRI, *[http://www.mpri. com.current/;]*, (accessed 15 April 2006).

Musah, A. & Fayemi, J. (2000): Mercenaries: an African security dilemma. Pluto Press, London.

Musah, A. & Fayemi, J. (2002): “Africa in Search of Security: Mercenaries and Conflicts- An Overview.” Mercenaries: an African Security Dilemma, Eds. Musah and Fayemi, London: Pluto Press, 13-43.

Nathan, L. (1997): "Trust Me I'm a Mercenary" The Lethal Danger of Mercenaries in Africa. University of Cape Town, 20 February, *[http://www.globalpolicy.org/nations/sovereign/military/0220trustme.htm]*, (accessed 24 September 2006)

O.A.U. Convention for the Elimination of Mercenarism in Africa (1977): O.A.U. Doc. CM/433/Rev.L.Annex 1 (1972), *[http://www1.umn.edu/humanrts/instree/1977e.htm]*, (accessed 11 March 2006).

O'Brien, K.A. (1998): “Private Military Companies – Time for Inclusion in the Official Debate?, prepared for the Conference on "European-led Military Operations in Support of Humanitarian Missions, Senate House, University of London, 5-6 November. (Department of Politics and Asian Studies, University of Hull, Institute for Security Studies, South Africa)

O’Brian K. (2000): “PMC’s Myths and Mercenaries – The debate on Private Military Companies” in Defense and International Security, February 2000, 62. Also available: *[http://www.kcl.ac.uk/orgs/icsa/Old/pmcs.html]*

O’Brian, K. (2002): “Leash the Dogs of War” in Financial Times, 20 February, *[http://www.globalpolicy.org/security/peacekpg/reform/pmc1.htm]*.

O'Rourke, P.J. (1987): Republican Party Reptile. The confessions, adventures, essays and (other) outrages of P.J. O'Rourke. London (Picador), 3.

Ortiz, C. (2004) “Regulating Private Military Companies: States and the Expanding Business of Commercial Security Provision”, in L. Assassi, D. Wigan and K. van

der Pijl (eds). Global Regulation. Managing Crises After the Imperial Turn. Houndmills / New York, Palgrave Macmillan, 206.

Ortiz, C. (2007) last revised 24 June 2007.*[http://www.privatemilitary.org/definition.html]*, (accessed 29 June 2007).

Padera, M. (2004) "Mercenary suspects: Investigations widen" Posted: Friday, 12 March, *[www.herald.co.zw/index.php?id=29915&pubdate=2004-03-12]*, (accessed 27 June 2006).

Paull, R. (1960): Retreat from Kokoda. (Quotation by Churchill, W. 27 April 1941). London: Panther Books.

Pech, K. (1999): "Chapter 5:Executive Outcomes – A corporate conquest", in Cilliers, J. & Mason, P. (1999). Peace, Profit or Plunder? – The Privatisation of Security in War-torn African Societies. ISS. South Africa.

Pech, K. & Beresford, D. (1997a): "Africa's New-look Dogs of War", in Weekly Mail and Guardian. 24-30 January, 24.

Pech, K & Beresford, D. (1997b): "Executive Outcomes is the world's first corporate army and -some argue - an effective peacekeeping report" Weekly Mail & Guardian, *[http://www.apc.org]*, (accessed 23 June 2006).

Peters, R. (1999): Fighting for the Future. Pennsylvania: Stackpole Books.

Reno, W. (1998): Warlord Politics and African States. Colorado: Lynne Rienner Publishers Inc.

Reno, W. (2000): "Africa's weak states, non-state actors and the privatization of interstate relations" in Harbeson, J.W. & Rothchild, D. (eds.) Africa in World Politics: The African state system in flux. Boulder: Westview.

Report of the Committee of Privy Counsellors Appointed to Inquire into the Recruitment of Mercenaries (1976): Her Majesty's Stationary Office. London, 2.

Republic of South Africa (1998): Regulation of Foreign Military Assistance Act no. 15, *Government Gazette*, No. 18912. Cape Town: Government Printer.

Rubin, E. (1997): “An army of one’s own.” Harper’s Magazine, February, 44–55.

SABC TV (1995): News in Afrikaans, 18:00 GMT, Johannesburg, 17 November.

Sage, A. (1999): "France's restless dogs of war bite back with strike," The Times, 5 February, *[http://www.-te-times.co.uk/news/pages/tim/99/02/05/timfgneur03005.html?22194 70]*, (accessed 15 March 2006).

Sandoz, Y. (1999): “Chapter 10, Private Security and International Law” in Cilliers, J. & Mason, P. (1999). Peace, Profit or Plunder? – The Privatisation of Security in War-torn African Societies. ISS. South Africa.

Saturday Star (1995): “SA firm ‘jeopardising Angola’s fragile peace’”, *Saturday Star*, 21 October.p 1.

Sawyer, P. (1998): Executive outcomes May 1998 updated July 1998, *[http://ourworld.compuserve.com/homepages/PeteSawyer/eo.htm]*, (accessed 19 September 2006).

Shearer, D. (1998a): “Outsourcing War” in Foreign Policy 112, Fall, 68–73.

Shearer, D. (1998b): “Private Armies and Military Intervention” in Adelphi Paper 316, The International Institute of Strategic Studies. New York: Oxford University Press.

Silverstein, K. (2000): Private Warriors, London, Verso.

Singer, P.W. (2003): Corporate Warriors: The Rise of the Privatized Military Industry, 14.

Singer, P.W. (2004a). “The Private Military Industry and Iraq: What have we learned and where to next?” Geneva Centre for the Democratic Control of Armed Forces (DCAF) policy paper, Geneva, November, 1, *[www.dcaf.ch/_docs/pp04_private-military.pdf]*, (accessed 17 August 2005).

Singer, P.W. (2004b): “War, Profits and the Vacuum of Law: Privatized Military Firms and International Law” in Columbia Journal of Transnational Law, *[http://www.columbia.edu/cu/jtl/archives.html]*, (accessed 17 August 2005).

Smith, E.B. (2002): “The New Condottieri and US Policy: The Privatization of Conflict and its Implications” in Parameters, Winter, 104-119.

Smith, P. (2005). “Mercenaries: dog days for Africa’s hired guns” in The African Report, 22-24.

Smoltczyk, A (2006): “Rich in oil poor in human rights – Torture and Poverty in Equatorial Guinea” 28 August, *[http://www.spiegel.de/international/spiegel/0,1518,434691-3,00.html]*, (accessed 16 September 2006).

Spearin, C. (2000): “A Private Security Panacea?” a response to “Mean Times on Securing the Humanitarian Space” for the Canadian Center for Foreign Policy Development, University of British Columbia, Second Annual Graduate Seminar 30 April – 5 May.

Spicer, T. (1999). An Unorthodox Soldier: Peace and War and the Sandline Affair.

Straw, J. (2002): Green Paper on Private Military Companies. titled “Private Military Companies: Options for Regulation” Ordered by the House of Commons to be printed 12 February 2002, London, the Stationary office, ISBN 0-10-291415-X, *[http://www.fco.gov.uk/Files/kfile/mercenaries,0.pdf]*, (accessed 3 September 2006).

Sunday Tribune (1994): "'Dogs of war' firm claims harassment", *Sunday Tribune*, 31 July.p1.

The Concise Oxford Dictionary. (1991):New York: Oxford University Press.

The Economist (1999): "Can Anyone Curb Africa's Dogs of War?," 16-22 January.

The Star (1995): "SA firm jeopardising peace in Angola", *The Star*, Johannesburg, 24 October, p2.

Uniform Code of Military Justice (2000): 10 U.S.C.§§ 801-946.

United Nations Press Release GA/SHC/3533 (1999): "Third Committee Members see increase in racism, discuss also use of mercenaries", The United Nations. New York, 21 October, 3, *[http://www.un.org]*, (accessed 26 June 2006).

United Nations Report on the Question of the Use of Mercenaries as a Means of Impeding the Exercise of the right of peoples to Self-determination (1997): UNESCOR, 44th Session, UNDoc. (E/CN/.4/1997/24), 20 February, *[www.unhchr.ch]*, (accessed 23 May 2005).

United States of America (2000): The Military Extraterritorial Jurisdiction Act of 2000, 18 U.S.C. §§ 3261-67, *[http://www.feds.com/basic_svc?public_law/106-523.htm]*, (accessed 24 November 2005).

Van Creveld, M. (1991): The Transformation of War, New York: The Free Press, 226.

Venter, A.L. (1995): "Not RUF Enough", in Soldiers of Fortune, December, 76.

Wayne, L. (2002): "America's For-Profit Secret Army" in New York Times. October 13, *[http://www.globalpolicy.org/security/peacekpg/training/mercenaries.htm]*, (accessed 9 March 2006).

Webb, B. (2006): Cape Times “Mercenary bill is shot down in parliament”. 23 May, 6.

Weinberg, S. (1995): Last of the Pirates: The Search for Bob Denard, Pantheon Books.

Yeoman, B. (2003): “Soldiers of Good Fortune” in Mother Jones Magazine, May-June, *[http://www.motherjones.com/news/feature/2003/05/ma_365_01.html]*, (accessed 6 May 2006).

Zagorin, A. (1997): “Soldiers for Sale” in *Time* magazine, Vol. 149, no. 21, 26 May.

Zarate, J.C. (1998): “The Emergence of a New Dog of War: Private International Security Companies, International Law, and the New World Disorder” in Stanford Journal of International Law, no. 34, 75-161.